

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY) San Francisco, California
) Tuesday, August 27, 2019
Debtors.) 10:08 AM
)

APPLICATION OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS,
PURSUANT TO 11 U.S.C. SECTION
1103 AND FED. R. BANKR. P.
2014 AND 5002, TO RETAIN AND
EMPLOY TRIDENT DMG LLC AS
COMMUNICATIONS CONSULTANT
EFFECTIVE AS OF JULY 18, 2019
[3324]

MOTION OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS
TO COMPEL PROCEDURES OF
THIRD-PARTY CONTRACTOR
DOCUMENTS [3205]

MOTION OF DEBTORS FOR ENTRY
OF ORDER PURSUANT TO 11
U.S.C. SECTION 365(D)(4) AND
B.L.R. 6006-1 FURTHER
EXTENDING TIME TO ASSUME OR
REJECT UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY
("SECOND LEASE EXTENSION
MOTION") [3396]

STATUS CONFERENCE RE:
DEBTORS' MOTION PURSUANT TO
11 U.S. SECTIONS 105(A) AND
502(C) FOR THE ESTABLISHMENT
OF WILDFIRE CLAIMS ESTIMATION
PROCEDURES [3091]

TRANSCRIPT OF PROCEEDINGS
BEFORE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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25 Proceedings recorded by electronic sound recording;
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SAN FRANCISCO, CALIFORNIA, TUESDAY, AUGUST 27, 2019, 10:08 AM

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THE COURT: Okay, who's up? Mr. Karotkin, are you with us today? I hope?

I got two matters other than status conference, so where do you want me to start? I mean, I'd like -- the status conference, I presume, will take a lot of various counsel, and we only have a couple of matters that are short. Well, maybe not.

MS. LIOU: Good morning, Your Honor.

THE COURT: Oh.

MS. LIOU: Jessica Liou from --

THE COURT: Oh, Ms. Liou --

MS. LIOU: -- Weil, Gotshal & Manges --

THE COURT: Okay.

MS. LIOU: -- on behalf of the debtors.

THE COURT: Good morning.

MS. LIOU: I'm here to address the second item on the agenda; it's the uncontested matter going forward today on the debtors' second lease extension motion.

THE COURT: Oh, yeah, that's -- no problem. That's --

MS. LIOU: Yeah.

THE COURT: I've reviewed that.

MS. LIOU: So I have --

THE COURT: That's fine.

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1 MS. LIOU: -- a revised proposed order here for you,
2 Your Honor --

3 THE COURT: Okay.

4 MS. LIOU: -- if you would like to view it.

5 THE COURT: No, just go ahead and upload it.

6 MS. LIOU: Great.

7 THE COURT: I've --

8 MS. LIOU: Okay.

9 THE COURT: I've reviewed the motion and seems fine to
10 me, too, so --

11 MS. LIOU: Sure. The only change would be reflecting
12 the supplemental declarations --

13 THE COURT: Right.

14 MS. LIOU: -- filed, which include the additional
15 stipulations --

16 THE COURT: Okay.

17 MS. LIOU: -- for extension.

18 THE COURT: Thank you, Ms. Liou.

19 MS. LIOU: Thank you.

20 THE COURT: Are you taking the Trident Bank (sic)
21 motion also?

22 MS. LIOU: No, that's going to be handled by Mr.
23 Karotkin.

24 THE COURT: Mr. Karotkin. Okay, thank you, Ms. Liou.

25 Oh, there you are. Good morning, Mr. Karotkin.

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1 MR. KAROTKIN: Good morning, Your Honor.

2 THE COURT: So is the only issue you've -- and the
3 only issue with the debtor, I guess, is you don't believe that
4 the TCC needs the services of Trident?

5 MR. KAROTKIN: No. And we're prepared to rest on our
6 papers.

7 THE COURT: Ms. Dumas, are you -- Mr. Julian? I have
8 a very minor question. The engagement (sic) suggests that the
9 TCC on its own can continue Trident's engagement past November
10 if it chooses to. What would be the circumstance? I mean, as
11 I understand from the papers, the theory behind this request is
12 to help the victims and get the kind of assistance that you
13 think they're entitled to. Is that something that would
14 continue after the claims deadline? Likely to be the case?

15 MR. JULIAN: Yes.

16 THE COURT: Do you know -- can you just tell me what
17 might be an example of what would happen?

18 MR. JULIAN: Yes, Your Honor. The committee, as you
19 know, under 1103, has a statutory duty to advise the
20 constituency of what's going on with respect to plan --

21 THE COURT: Right.

22 MR. JULIAN: -- negotiations and the like, in this
23 case. There are always issues coming up where the members and
24 the lawyers are getting calls. And so we communicate through
25 the website and other methods. And what we anticipate doing is

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1 answering questions through frequently asked questions on the
2 website or press releases and the like --

3 THE COURT: Um-hum.

4 MR. JULIAN: -- dealing with the estimation process,
5 pendency of claims, plan negotiations, and the like.

6 So we anticipate this going forward. And we have
7 found that it's simply cheaper for a specialist to charge us
8 way lower rates than a lawyer at the Baker firm to help the --

9 THE COURT: Or any other firm.

10 MR. JULIAN: Yeah -- help the members of the --

11 THE COURT: But what if --

12 MR. JULIAN: -- of the committee.

13 THE COURT: -- one of the victims calls one of the
14 Trident people who's not law-trained and it ends up getting
15 bounced over to one of your lawyers anyway? I mean, I grant
16 you that Trident may be performing a very critical service, but
17 they also may be fielding -- they may be just intermediaries to
18 some of these questions that are so uniquely bankruptcy -- or
19 the bankruptcy procedure that I would assume many of the
20 victims don't have knowledge about. Why would Trident have any
21 knowledge about that?

22 MR. JULIAN: Well, we've -- here's what we did. So we
23 operated without them for a while, and there was heavy draw on
24 the lawyers. Now, since they've been on board for a month
25 helping out, the lawyer time still was involved but it's much

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1 farther reduced. Basically what I'm looking at is insider
2 information, securities issues like that.

3 It's really been truncated now. They've been a great
4 help and they're much cheaper for us. So I think it's working
5 out this way.

6 THE COURT: Okay, I'm willing to overrule the
7 objection by the debtor. I don't -- I'll take your word for it
8 and the word of the victims. I guess I would make one minor --
9 first of all, I think your opposition pointed out -- or your
10 response, rather, pointed out that much like other
11 professionals, the engagement here has similar language. It
12 wasn't true in the employment application or the engagement,
13 because the negligence issue was not added on. But it's in the
14 order. So it's just my -- it's a personal thing about making
15 sure you don't get indemnified for your own negligence.

16 The only other thought, then, would be, if the
17 committee chooses to extend, by a month or two or three or
18 whatever period of time, Trident's engagement beyond the mid-
19 November, I think it would be appropriate at least to give the
20 official creditors' committee and the debtor just a quick
21 heads-up on it, maybe a ten-day notice on a scream-or-die
22 basis. So I would propose -- I don't know, sitting here, what
23 our November dates are. But I would say, as you get near the
24 end of October when -- if your client decides to extend Trident
25 or Trident convinces you that's the right thing to do, we don't

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1 have to turn this into a big deal; it can be just ten days to
2 give both the OCC and the debtors -- and I guess we include the
3 U.S. Trustee; they should be included -- an opportunity just to
4 be heard and, if there's no response, you could just submit an
5 order. You shouldn't have any problem with that; would you?

6 MR. JULIAN: That's fine, Your Honor.

7 THE COURT: Okay.

8 MR. JULIAN: We'll add that to the order and upload
9 it.

10 THE COURT: Okay. So ten-day to extend. And I
11 believe now -- you've persuaded me that it seems like a good
12 thing to do to -- not only to ease the burden on you and your
13 colleagues in the firm but also perhaps nonlawyers being able
14 to communicate on a less lawyerly-like manner to the people
15 that need the information.

16 Okay. Thanks very much.

17 MR. JULIAN: Thank you, Your Honor.

18 THE COURT: So are we going to go forward on the
19 third-party contractor document? Is that still viable for
20 today, or not?

21 MS. MORRIS: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MS. MORRIS: Kimberly Morris from BakerHostetler, for
24 the official committee of tort claimants.

25 THE COURT: And --

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1 MS. MORRIS: Your Honor --

2 THE COURT: Yes?

3 MS. MORRIS: Do you have a question?

4 THE COURT: Well, no. Who -- someone started to
5 speak; I don't know who.

6 MS. MORRIS: Oh, on the phone?

7 THE COURT: Well, Mr. Orsini, you're not on this one
8 today?

9 MR. ORSINI: I am, Your Honor. I'll be responding for
10 the debtors.

11 THE COURT: Well, my question is, is it something that
12 should be taken separately today or part of the -- sort of the
13 whole question of discovery generally? What do you think?

14 MR. ORSINI: Well, candidly, Your Honor, from our
15 perspective, the motion is an example of further meet-and-
16 confer by motion. There are a whole series of issues that they
17 raise for the first time with us in the reply brief, at which
18 point they've abandoned all their initial ones. I propose we
19 meet and confer on those, because, candidly, we're willing to
20 look into most, if not all, of that, to see if we can get them
21 the documents they're looking for. We never heard of these
22 issues until the reply.

23 THE COURT: Is there any reason why we can't just
24 defer this, Ms. Morris?

25 MS. MORRIS: Your Honor, this request has been

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1 outstanding since April.

2 THE COURT: No, I know.

3 MS. MORRIS: And these documents are critical to our
4 ability to analyze many of the issues that relate to the Camp
5 fire, which is the most --

6 THE COURT: Well, but are they critical to the
7 estimation process? In other words, we are now moving up the
8 ladder of intensity: different judges, different focus. And
9 investigation or discovery of third-party contractors seems a
10 bit of a stretch beyond the immediacy of the importance of the
11 estimation process.

12 MS. MORRIS: They are related to the estimation
13 process, Your Honor, but these are not minor third-party
14 contractors.

15 THE COURT: No, I know.

16 MS. MORRIS: PG&E used a number of significant third-
17 party contractors to perform essential services on the Caribou-
18 Palermo line, and one of the reasons why we asked for this
19 discovery back in April is because the Camp fire is the one
20 fire that was not subject of any litigation prior to this --

21 THE COURT: No --

22 MS. MORRIS: -- bankruptcy proceeding.

23 THE COURT: -- I'm aware of that. I'm aware of that.

24 MS. MORRIS: Many of the documents are still being
25 held up by criminal investigations. And this information is

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1 essential for us to start to understand even how PG&E operated
2 the line that contained the parts that failed and caused
3 the Camp fire.

4 THE COURT: But we're going to talk later today, and
5 Judge Donato and others -- somebody -- other people will be
6 talking about the kind of discovery that's appropriate for the
7 estimation, the timing of it, and so on. It seems to me that,
8 to the extent that there's a third-party contractor document or
9 issue that somehow is part of what has to be framed as the
10 ground rules for the estimation, should be considered in that
11 context.

12 Again, I'm not saying no. I'm saying it's kind of an
13 isolated thing that isn't the same as -- from my point of view,
14 as it was in April. So if you were frustrated that you didn't
15 get it in April, that's unfortunate. But isn't it, sort of, of
16 lesser importance, relative (sic) speaking, to the question of
17 the estimation? I mean, Mr. Orsini and people on your side
18 have focused on these issues that are critical to the
19 estimation. And I'm having trouble knowing that third-party
20 contractor issues are sort of front and center on the
21 estimation; estimation are what are PGE's defenses and what are
22 the damages, not who else might be liable.

23 MS. MORRIS: Your Honor, we're not looking at these
24 documents just for who else may be liable.

25 THE COURT: Well, I think that's what's said in the

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1 motion. I mean, there's something about that in the motion,
2 so --

3 MS. MORRIS: It is. And at the time, Your Honor,
4 PG&E's arguments as to the fact that they are not accepting
5 legal responsibility for all of these fires wasn't entirely
6 clear to the tort claimants' committee at that time.

7 THE COURT: Okay.

8 MS. MORRIS: However, we were seeking the documents at
9 the time we filed, but we were seeking these documents not only
10 because these contractors could have liability and they have
11 significant pools of insurance, given the size and nature of
12 these contractors --

13 THE COURT: Right.

14 MS. MORRIS: -- but also because they were essential
15 for the tort claimants' committee to start to understand the
16 work that was performed.

17 Just so Your Honor understands, the work performed by
18 some of these contractors goes to the heart of --

19 THE COURT: Oh, I know that.

20 MS. MORRIS: -- the negligence cases here.

21 THE COURT: I know that. I know that. If third-party
22 contractor did some careless, negligent work, maybe that person
23 should be held accountable, but so should the debtor, unless
24 the debtor has an absolute defense that the contractor
25 wouldn't. My point is that the estimation process is designed

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1 to get the right amount of money -- an appropriate, right
2 amount of money, consistent with AB1054 and the concepts of
3 what the plan is supposed to deal with. And if there's an
4 adequate resolution there -- I don't want to say the third-
5 party contractors are off the hook. Maybe they are on the
6 hook. But the point is it's not the front priority. The
7 company itself might have claims against those third-party
8 contractors.

9 MS. MORRIS: It's not only about the claims against
10 the third-party contractors; it's the product that was provided
11 to the company from those third-party contractors. They
12 performed services like assessing the life expectancy of the
13 parts, the very part that failed in connection with the Camp
14 fire. And PG&E used those reports; they used information to
15 determine how often to inspect the line, to determine how
16 often -- whether they were going to let the part run to
17 failure, as they called it, and let it fail before they
18 replaced it.

19 THE COURT: Right.

20 MS. MORRIS: All of that information is critical to
21 the estimation process, and it's a specific pool of documents
22 that relate just to the third-party contractors that I believe
23 that Your Honor should order that they produce now. It's been
24 outstanding for four months. And PG&E trying to push it off
25 into the estimation discovery when they've known about it for

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1 four months, Your Honor --

2 THE COURT: Well, again, I'm not trying to talk you
3 out of it, because you're being a lawyer who's advocating your
4 cause. But what I'm telling you is it seems like it's part of
5 the big nut that has to be cracked here --

6 MS. MORRIS: Um-hum.

7 THE COURT: -- sooner rather than later. And so
8 whatever happened in April or May or June doesn't count. It's
9 now the end of August, and the clock is ticking, and another
10 court is getting ready to be involved in estimation, and we're
11 all focusing on that. So it seems like this is one of those
12 things that is part of the bigger whole.

13 One other question before I call on Mr. Orsini. If
14 you came across, in your discovery, culpability by a third-
15 party contractor, the TCC wouldn't have any claim against the
16 contractor, would it, any direct claim? So it'd be a claim
17 that would belong to the debtor anyway, wouldn't it?

18 MS. MORRIS: It could be, Your Honor, but it's --

19 THE COURT: Well --

20 MS. MORRIS: -- something that could be assigned as
21 part of the resolution of the whole bankruptcy case.

22 THE COURT: I agree, it could be. But the point is,
23 if you found something critical, if you opened up the file and
24 said, my God, I got this third-party contractor big-time, I
25 don't think the TCC would be in a position to do anything about

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1 it today. It would go into the mix of part of the negotiation
2 of the result. But at the end of the day, it's still the
3 debtors who owe the victims. And if the debtors make good --
4 do the right thing for the victims, proper result, maybe this
5 problem goes away, right? Right?

6 MS. MORRIS: That's part of it, Your Honor, but part
7 of it also relates to PG&E's own conduct and what PG&E knew,
8 itself, and how --

9 THE COURT: I agree.

10 MS. MORRIS: -- PG&E operated the lines themselves.

11 THE COURT: I agree.

12 MS. MORRIS: Just by way of one example, Your Honor;
13 PG&E -- this request called for -- would have called for all
14 documents that were used by third parties to risk score the
15 line. We have emails that were produced in other forums, in
16 other courts, that show that McKinsey Consulting (sic), one of
17 their third-party contractors, for which they produced not one
18 single document in response to our request -- that that
19 contractor was part of a "team", as it's described on an email,
20 that determined that, on the Caribou-Palermo line -- and I'm
21 taking this quote directly from the email -- that "although the
22 likelihood of failed structures happening is high, the affected
23 customers are less than 1,000. And it's not likely a public-
24 safety issue with live wires down because it was in a remote
25 area." This goes to the heart of the negligence case.

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1 THE COURT: Yeah. I understand.

2 MS. MORRIS: PG&E employees as well as McKinsey
3 consultants were on that email, yet they're taking the
4 hairsplitting position that it wasn't called for because they
5 actually didn't go out and look at the lines while they're
6 scoring -- they're evaluating the lines and working with PG&E
7 to do that. And it created the entire risk model upon which
8 PG&E based their scoring system.

9 So it goes to the heart of this negligence case
10 against PG&E and not just the third-party contractors; that
11 could be part of it, but it goes to the heart of PG&E's
12 negligence case against the third-party contractors. And
13 there's no reason to wait when we know and can identify at
14 least some of those third-party contractors now, based upon
15 what they've already provided to us, that they shouldn't be
16 obligated to produce emails and invoices, of which we've
17 received none as part of their production and were specifically
18 called for by our request. There's no reason to delay that and
19 push that off into the estimation discovery, when it should be
20 easily identifiable now.

21 THE COURT: Okay. Let me hear what Mr. Orsini says
22 about that.

23 Oh, okay, counsel in the other courtroom, go ahead and
24 speak up.

25 Yes.

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1 MS. RIDDLE: Yes, Your Honor. Can you hear me?

2 THE COURT: Yes.

3 MS. RIDDLE: Amanda Riddle for the wildfire
4 plaintiffs. I just wanted to add something to what Ms. Morris
5 said. It's not about the third-party contractors' liability.
6 PG&E has a nondelegable duty to maintain their lines, to
7 maintain their infrastructure, and to deliver electricity
8 through Northern California safely. So regardless of whether
9 or not it was a contractor who did the work or whether it was a
10 PG&E employee with a PG&E uniform and a PG&E truck, PG&E is
11 liable for the negligence.

12 The documents that Ms. Morris is speaking of, as she
13 said, not only relate to contractor negligence, but they
14 relate, more important and very specifically for this
15 proceeding, to PG&E's negligence because even if it's done by a
16 contractor, PG&E is responsible for those actions.

17 THE COURT: Okay. Thank you very much.

18 MS. RIDDLE: Thank you.

19 THE COURT: Mr. Orsini. Yeah, I don't want to get
20 hung up on the literal words of a 2004 exam request. You
21 know --

22 MR. ORSINI: Well, I --

23 THE COURT: You know the deal: you got to give them
24 the information.

25 MR. ORSINI: I do, Your Honor.

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1 Kevin Orsini on behalf of the debtors, for the record.

2 So there's the question of what discovery they're
3 ultimately going to get as part of the estimation, and there's
4 the fact that they filed a motion to compel for documents they
5 didn't even ask for and didn't raise with us as being documents
6 that they actually wanted. Right? The request here that's at
7 issue -- and this is just the context because they're talking
8 about it's been months. The requests they served were for
9 documents for each third-party contractor who performed work on
10 any portion of the line --

11 THE COURT: No, I know, and I --

12 MR. ORSINI: -- at issue.

13 THE COURT: Again, I'm --

14 MR. ORSINI: And --

15 THE COURT: I read literally -- as a literal
16 constructionist, you were right; they didn't ask for it the
17 right way. But --

18 MR. ORSINI: Right. And so I've said -- I've said,
19 Your Honor, today, I've said in repeated correspondence with
20 the TCC -- that we're willing to engage on other documents they
21 want, including documents about McKinsey, about the risk
22 assessment, about all of that. We're willing to engage and
23 produce those documents. There've been four categories of
24 documents that they raise in their opening brief they had never
25 asked for before that we've since said we'll give to you -- a

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1 number of them that we've already given to them. Right?

2 So this is just a waste of the Court's time and the
3 debtors' time, for them to be filing a motion to compel on
4 things they never raised with us, that are not responsive to
5 their request, and that ought to be dealt with, as Your Honor
6 said, as part of the broader discussion we're having about
7 discovery.

8 THE COURT: Well, but doesn't that mean that, if there
9 are some documents in the file, in the folder -- whether it's
10 McKinsey or somebody else; I don't care who it is -- the TCC
11 should be getting it as part of the information that's going to
12 be part of your "show my why you're not liable". Your
13 letter -- your second -- your August 24th letter and the
14 response sort of said, okay, I mean, I know that I got to tell
15 you what my legal facts and theories are to say the company
16 isn't liable.

17 MR. ORSINI: So --

18 THE COURT: Right?

19 MR. ORSINI: So stated differently, Your Honor, do I
20 agree that there's going to have to be discovery on these types
21 of documents? Absolutely. Absolutely.

22 THE COURT: Right.

23 MR. ORSINI: Right? What we're here on is a motion to
24 compel on requests that don't cover these. So my point is,
25 very simply, there's no relief warranted on the motion.

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1 THE COURT: Right.

2 MR. ORSINI: Your Honor is absolutely right that we
3 ought to address what -- the broader issue of the discovery on
4 the other documents that they didn't ask for in these requests
5 but that they want in the conversation about how we're getting
6 to estimation. That's my point.

7 THE COURT: Okay, well, I'm going to -- I'm going to
8 take your counsel on that subject.

9 And Ms. Morris or Ms. Little (sic), I'm not denying
10 your request. I'm really sticking with what I just said a few
11 minutes ago. This has all got to be part of a big inquiry, and
12 we start with the kind of positions that are set forth in two
13 important documents, to me: one is the request that
14 accompanies the -- let me keep my dates straight -- the
15 response to Mr. Orsini's August 22nd letter from the TCC, and
16 then his August 24th response, and then some of the arguments
17 that have been made by others who've weighed in on the whole
18 subject of what kind of discovery needs to go forward as part
19 of the estimation.

20 So I'm just going to defer it and not act on this
21 motion. I'm neither going to grant or deny it. I'm going to
22 fold it into the bigger discussion. Okay?

23 MR. ORSINI: Thank you.

24 THE COURT: So let me come back now -- Mr. Karotkin,
25 are you going to be more involved in responding to the kind of

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1 items that I asked to talk about on the status conference, or
2 Mr. Orsini'll get into that?

3 MR. KAROTKIN: I think both of us will be tag-teaming
4 on that.

5 THE COURT: Okay, well, I -- when I did my order for
6 today's proceeding, I wasn't -- I mean, a lot was going on -- a
7 lot's been going on for all of you and your clients, but a
8 lot's been going on our end of it also, with decisions that I
9 made about the Camp fire, and -- of course unrelated
10 specifically but still a lot going on -- exclusivity, then the
11 question of withdrawal of the reference, and the district
12 court's response to that, and so on.

13 So when I prepared the order that I issued on the 20th
14 of August, it was really to get a -- to get a conversation
15 going about a number of things. And I'm not even wedded to the
16 sequence that I put in there, but let's do that. I'll stick
17 with that for the moment.

18 So, Mr. Karotkin, I'll really ask you, are you on
19 track for September 9th filing? Is that still on schedule?

20 MR. KAROTKIN: Very much so, sir. We intend to file
21 the plan --

22 THE COURT: And is --

23 MR. KAROTKIN: -- by that date.

24 THE COURT: And is it -- I mean, leaving aside all the
25 things that have to go with any plan that any debtor files, is

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1 it a plan that, in your sense -- your mind, is the plan the
2 debtors are going to try to seek to get confirmed in some way,
3 even if there's some loose ends? Clearly, the estimation is a
4 critical fact but, I mean, it's not going to be one of these
5 plans that says "more later"? I mean, it's going to do the
6 classification and set forth who's going to get impaired and
7 who isn't?

8 MR. KAROTKIN: Yes, sir.

9 THE COURT: And is there enough of a -- meat on the
10 bones for the financial end of it, that --

11 MR. KAROTKIN: Well, I believe so, Your Honor. And
12 again, as you know, there is some uncertainty here because of
13 the upcoming estimation process --

14 THE COURT: Um-hum.

15 MR. KAROTKIN: -- and how that pans out in terms of
16 exactly what the fire claimants and the insurance companies
17 would be entitled to, under a plan. So I think that, as time
18 moves forward, there'll be more clarity on those issues, and
19 the plan may have to be adjusted to address some of those
20 issues. But again, we'll have to see how that plays out both
21 in this court and in the district court.

22 THE COURT: Well, tell me if I've got this basic
23 concept right: that -- and I think I mentioned in my order for
24 today that I looked at the competing plans that did not get
25 passed the last time around. But should I -- may I assume

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1 that, for the most part, the impaired classes are those same
2 two classes and that everybody else is going to be unimpaired?
3 Is that a fair presumption?

4 MR. KAROTKIN: That's a fair presumption in addition
5 to we believe that the public entities are impaired as well.

6 THE COURT: Okay. So therefore -- again, I'll risk an
7 oversimplification. You'll recall, when we had the discussion
8 about the motions for redetermining exclusivity, that the
9 senior bondholders and the ad hoc subrogation group, they both
10 had a fund; they had the amount of money, a target. There was
11 some range. But I seem to recall one of their lawyers -- I
12 think it was -- well, I don't remember which of the lawyers it
13 was, but it was one of the lawyers representing the subrogation
14 group -- sort of said that maybe the numbers change depending
15 on the estimation.

16 So is that still a safe assumption? If the estimation
17 is fixed at X, the plan will read, well, we're going to deal
18 with a pot of X -- a fund of X; if it's 2X, you just have to --
19 it sounds simple, you just have to change the number. Then how
20 you get the money is a different story.

21 MR. KAROTKIN: Well --

22 THE COURT: Right?

23 MR. KAROTKIN: -- again, Your Honor, if there's a
24 finding that with respect to the subrogation claims we have to
25 address X and with respect to the individual claims we have to

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1 address Y --

2 THE COURT: Correct.

3 MR. KAROTKIN: -- the plan, in order to comply with
4 AB1054, will have to be modified to address that.

5 THE COURT: Correct.

6 MR. KAROTKIN: And then the funding --

7 THE COURT: Yeah, but what I'm --

8 MR. KAROTKIN: -- sources as well --

9 THE COURT: The funding sources.

10 MR. KAROTKIN: -- will have to be there to address
11 that, as well.

12 THE COURT: But that's what I'm driving at. I just
13 wanted to see if you and I are on the same page, and I think we
14 are. So --

15 MR. KAROTKIN: Think we are.

16 THE COURT: So if we go back to sort of basic Chapter
17 11 101, one of the things you learn in 101 school is you got to
18 say what the treatment is and then you got to say the means of
19 execution.

20 MR. KAROTKIN: Correct.

21 THE COURT: It seems to me there are two deltas here,
22 big ones. One is, how much; that's the estimation: Tubbs,
23 district court, bankruptcy court, negotiation. But all those
24 forces come to bear on how much dollars goes to the two
25 different classes of victims. And then the means of execution

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1 vary on how much you have to pay is how much you have to put
2 in, whether it's public offering or new legislation or equity,
3 or any number of other things. Am I right?

4 MR. KAROTKIN: You're right. And just --

5 THE COURT: Okay.

6 MR. KAROTKIN: -- obviously, to keep in mind, Your
7 Honor, and I think I'm not telling you anything you don't know,
8 funding sources are not going to say, I'm going to provide
9 unlimited funding.

10 THE COURT: Correct.

11 MR. KAROTKIN: So that may be a fluid concept, moving
12 forward.

13 THE COURT: No, but the point is, in terms of -- at
14 some point the managers and the lawyers representing the
15 debtors and the managers and the representatives representing
16 the funding sources are going to have to come to an agreement
17 that, based upon either what we're negotiating with the victims
18 or the subrogation or what the courts are fixing, we know what
19 has to be the amount; therefore, we have to negotiate how we're
20 going to do it.

21 And to me, that gets back to my point. There're
22 really two halves of this plan process. And one side says, as
23 I said in my papers, I don't think you need a fancy disclosure
24 statement to tell the victims how much they're going to get and
25 when. But you do need, I -- and I'm going to ask Mr. Kornberg

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1 or others from the Commission to tell me -- you need to get a
2 much more expansive explanation of how you're going to do it.
3 And AB1054 itself lays out, for the CPUC and the bankruptcy
4 court, what kind of considerations have to be taken into
5 account. But they all seem to relate, for the most part, to
6 that second half of the problem: how're you going to do it,
7 not what are you going to do. Again, are we on the same page?

8 MR. KAROTKIN: I think we are. And all --

9 THE COURT: Okay.

10 MR. KAROTKIN: -- I think I'm saying, Your Honor, is
11 that there are sources today who we have who are willing to
12 provide funding --

13 THE COURT: Right.

14 MR. KAROTKIN: -- based on certain numbers and certain
15 assumptions. And if the estimation comes in at something
16 different, then those issues are going to have to be,
17 obviously, revisited, and people are going to have to address
18 those issues.

19 THE COURT: And then it goes both ways. I mean, if
20 the Tubbs fire comes in for the debtor, that might --

21 MR. KAROTKIN: Exactly right.

22 THE COURT: -- not drive it a different way. And --

23 MR. KAROTKIN: All I'm saying, Your Honor, is we can't
24 get --

25 THE COURT: Yeah.

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1 MR. KAROTKIN: People are not going to come in on
2 September 9th and say I'm going to give you unlimited amounts
3 of money.

4 THE COURT: I got it.

5 MR. KAROTKIN: Okay. That's all I'm saying.

6 THE COURT: I got it.

7 MR. KAROTKIN: So as we move forward, that will be
8 adjusted to address what happens in the estimation process,
9 because under 1054 we are required to do certain things with
10 respect to the wildfire claims, both the victims and the
11 insurance companies.

12 THE COURT: Well, right, but the way I read 1054 --
13 and again, I can't read it all, it's so long, but I read the
14 critical sections, and it says that you've got to either reach
15 a resolution or a determination by the court -- a court.

16 MR. KAROTKIN: Correct.

17 THE COURT: And then that's really all that I think it
18 says for the victims. And again, I'm using "victims" and
19 "subrogation" --

20 MR. KAROTKIN: Um-hum.

21 THE COURT: -- "victims" -- on the one hand. The
22 flipside of that is what I, again, want Mr. Kornberg or others
23 to help me on, is what are the requirements to fill in the
24 blanks on the how you're going to do it, not what are you going
25 to do. So it looks to me like the Commission has to decide is

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1 the funding source adequate, does it impact rates, is it
2 feasible, is it in the best interest; all the magic words.

3 But what I read from 1054 was there's very little as
4 to what goes into that pot for the victims, as long as it's the
5 right amount that the Court has determined or the parties have
6 agreed to.

7 MR. KAROTKIN: Correct.

8 THE COURT: Right?

9 MR. KAROTKIN: I agree with that.

10 THE COURT: So this gets back to my point about
11 wanting to do the sequencing. I want to break the -- and I
12 want to hear from you and the other lawyers, obviously -- break
13 the traditional linear process of plan and disclosure
14 statement, lots of time on disclosure statement and then go to
15 plan issues. I'd like to put them on parallel tracks. And to
16 me, the track for the disclosure statement is the track that
17 stops at the estimation station until that is done. Meanwhile,
18 I would think that some portion of the "how you're going to do
19 it" process could go forward with the Commission. Now, if I'm
20 wrong about that, I --

21 MR. KAROTKIN: No, I think --

22 THE COURT: -- I need to be --

23 MR. KAROTKIN: -- I think you're right. And Mr.
24 Kornberg, I think, will address some of those things. We --

25 THE COURT: So when I went to your time line -- see,

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1 that goes back to the time line that you filed when -- back on
2 the 12th when you said plan, September 9th, and then switching
3 over to deadline for hearing on disclosure statement, October
4 14. That's what seems completely unnecessary, for me. To me,
5 the disclosure statement ought to be over on the side. And
6 maybe it's too soon to know what the amount of funding will be,
7 but I would hope that some of the -- some of the concepts of
8 the plan could be fleshed out and vetted by the CPUC.

9 MR. KAROTKIN: I think that -- I think that's right.
10 I think what Mr. -- I don't want to speak for Mr. Kornberg but
11 I'll try anyway. I think what Mr. Kornberg will say is that
12 for the CPUC to get started, they will need to see the plan.

13 THE COURT: Um-hum.

14 MR. KAROTKIN: It not necessarily will need to see the
15 disclosure statement.

16 THE COURT: Right.

17 MR. KAROTKIN: And --

18 THE COURT: That's fine.

19 MR. KAROTKIN: And --

20 THE COURT: That's what I want him to say.

21 MR. KAROTKIN: Yeah. Well, I think that's what he's
22 going to -- I hope that's what he's going to say.

23 And I noticed in your order, Your Honor, where you
24 were -- you referenced Bankruptcy Rules 3016 and 3017. And
25 3016, obviously, gives Your Honor the right to defer the filing

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1 of a disclosure statement.

2 THE COURT: Right. Right.

3 MR. KAROTKIN: And reflecting on that, and in view of
4 the circumstances we're faced with here with the estimation
5 hearing coming up and the details of that not even been set
6 yet, and then with Judge Donato involved --

7 THE COURT: Right.

8 MR. KAROTKIN: -- it seems to us -- again, subject to,
9 obviously, what you have to say -- that the filing of the
10 actual disclosure statement should be deferred for some period
11 of time until we get more clarity on some of these issues. But
12 we would --

13 THE COURT: Yes.

14 MR. KAROTKIN: -- we would leave that to you. It
15 seems --

16 THE COURT: Well, I would like -- "meet and confer" is
17 becoming a common term here. But to me, you and the debtors'
18 representatives and the two affected committees' counsel ought
19 to sit around and come up with what is an adequate disclosure
20 statement. And I said in here, I don't want it to look like a
21 phone book. You should have seen what the earlier drafts
22 called it.

23 MR. KAROTKIN: Well --

24 THE COURT: And I didn't -- it doesn't need to be much
25 of anything. I'm not --

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1 MR. KAROTKIN: We got a good phone book in the works,
2 Your Honor --

3 THE COURT: Yeah.

4 MR. KAROTKIN: -- let me tell you.

5 THE COURT: Well, I don't want a big one.

6 MR. KAROTKIN: No, I understand.

7 THE COURT: I want a little one. And you've learned
8 from me and my views on exclusivity, and surprised you were on
9 my result. But the same about the disclosure statement. I
10 think that more time is wasted on disclosure statements than --
11 and then I just don't want it to be the thing here.

12 If Ms. Dumas and Mr. Julian have different views, they
13 can explain it. But I don't think we want to burden the
14 victims of these fires, with the Manhattan --

15 MR. KAROTKIN: No.

16 THE COURT: -- phone book.

17 MR. KAROTKIN: No. And I --

18 THE COURT: Okay?

19 MR. KAROTKIN: -- think that -- again, we will file
20 the plan on or before September 9th. And I think that your --
21 what I think was your suggestion, that we defer filing a
22 disclosure statement at the same time and we consult with the
23 parties as to what's appropriate and, as we get -- as things
24 move forward, we'll have more information as to what's relevant
25 financing, treatment of claims, that type of thing. So --

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1 THE COURT: Yeah, I mean, I --

2 MR. KAROTKIN: -- I think it makes sense.

3 THE COURT: -- I realize that Mr. Orsini would like to
4 have the estimation done before Halloween, but it just isn't
5 going to happen. And one of the questions on the Tubbs fire
6 timing is one thing. I personally don't have as much control
7 as I might have under other circumstances to control the
8 estimation process. But the point is, everybody understands
9 what we're up against. And that'll be the subject of some
10 further discussion.

11 What I thought about doing is giving you a date on our
12 next calendar, and it might be too soon right after the 9th --
13 is to -- so we'll figure that out at the end of the hearing
14 today -- is to have a status conference that will have whatever
15 other matters we have to talk about, but it's when everybody
16 will see what the debtors' plan is and perhaps then have a
17 discussion about what needs to be discussed and scheduled and
18 thought about. Again, I'm not making any rules yet. I want to
19 hear from the committees -- both committees and the CPUC and
20 other parties.

21 So let's see what other people want to say about my
22 thinking on that aspect. So to --

23 MR. KAROTKIN: Sure.

24 THE COURT: -- to make, in simple terms -- and, Mr.
25 Karotkin, I don't know how much you know about what we've done

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1 here. We're kind of the innovators here in the small cases, in
2 this district, with the simplified plan and disclosure
3 statement which, by the way, the President signed into law last
4 week on the -- simplified for little Chapter 11s. But this
5 notion of just treating the disclosure as part of the plan
6 and a simple thing; it's very -- part of the culture of easy
7 cases. I want to make it part of the culture for this very
8 difficult case.

9 All right, so, Ms. Dumas, are you going to speak to
10 this issue? Would you like to?

11 Good morning.

12 MS. DUMAS: Good morning, Your Honor. Cecily Dumas,
13 BakerHostetler, appearing on behalf of the official committee
14 of tort claimants. I would appreciate the opportunity to
15 address this issue in a way that I'm hoping will be neutral and
16 explanatory. And I hope everyone will agree that I'm
17 expressing, sort of, the points of view fairly.

18 There's a major difference of opinion between the
19 debtors and the TCC, with respect to, kind of, a big
20 overarching question, and that is whether or not in the
21 aggregate the tort claims, subrogation claims, individual
22 plaintiff claims, and PE claims -- public entity claims --
23 whether those collectively are in an amount that can be proven
24 to be higher than the net distributable value of the debtor, in
25 other words, at a discount.

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1 So let me explain what I mean by that. PG&E at
2 confirmation will have a total enterprise value, and that
3 enterprise value will be something that we learned from the
4 debtor based on its business plans and projections. And you
5 saw that we're anxiously ahead of the Court in wanting to see
6 those, and we apologize. But we see the -- sort of the
7 enterprise value as a number, an analysis that will inform
8 everyone.

9 So what do I mean by the "distributable value"? We're
10 all assuming optimistically and, I think, maybe realistically
11 that these debtors are solvent, that the plan that is proposed
12 by any of the three current plan proponents or someone else
13 will provide for the payment in full of the bank debt, the bond
14 debt, the trade debt, employee claims, and have the either
15 agreed or estimated amounts for tort claims. So we're on the
16 same page as what Mr. Karotkin described in terms of the only
17 impaired class will be tort claims.

18 So if you take into account the money that would be
19 necessary to pay the DIP loans back and treat the other claims,
20 there is some net amount that the value of the debtors at
21 confirmation dictate. There's not general agreement; there's
22 only guesses, as to what that number may be. But between the
23 roughly eighteen billion in insurance payments that the
24 insurers have told us they will pay out when all is said and
25 done, the one billion of PE claims and then --

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1 THE COURT: Well, that's only one category of PE
2 claims, right?

3 MS. DUMAS: That's only -- and that's only -- thank
4 you for reminding me of that. FEMA stepped in with claims that
5 we understand may be in the multibillion -- but -- and then the
6 victim claims --

7 THE COURT: But, excuse me, that one billion is a
8 finite agreed number between one county and the debtors, right?

9 MS. DUMAS: No, it's --

10 THE COURT: It's more than that?

11 MS. DUMAS: -- more than one county, but it's --
12 you're right, it doesn't include all public entities.

13 THE COURT: Okay.

14 MS. DUMAS: So --

15 THE COURT: That's what I thought.

16 MS. DUMAS: So whatever that aggregate amount is -- so
17 we've got -- let's just say, for purposes of my hypothetical,
18 you've got nineteen billion right there, and then you've got
19 some other amount for individual victims. Now, if you're -- in
20 Mr. Orsini's analysis, that number may be another ten billion
21 and that in the aggregate sense all those claims -- eighteen
22 plus one plus ten -- twenty-nine billion -- would be amounts
23 that the debtor can satisfy within its ability to pay claims,
24 in other words, less than the distributable value of the
25 company. The tort claimants believe that under any

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1 circumstance -- and we may be wrong, but we believe that under
2 any circumstance, the individual victim number is going to be
3 higher than that net after the claims that you can calculate
4 from insurance payments or the settlement and that, even
5 accounting for losing Tubbs -- and it's because of the
6 magnitude of the -- what we've described before, the higher-
7 than-calculated property damages, the emotional-distress claims
8 and the like. So --

9 THE COURT: No. No, no, you --

10 MS. DUMAS: -- we can agree or disagree on that. But
11 one fundamental thing that sort of needs to be figured out is
12 are we talking about eighteen plus one plus another eight or
13 ten, or are we talking about eighteen plus one plus forty?

14 THE COURT: But that's the whole estimation process --

15 MS. DUMAS: Exactly, but --

16 THE COURT: -- right?

17 MS. DUMAS: -- but that needs to get reduced down to
18 the distributable value. And that's the estimation process,
19 that under any circumstance the company can't pay more than its
20 value.

21 So that brings me to -- and again, I'm not trying to
22 take sides; I'm trying to help the Court in understanding the
23 current dynamics in which the plan process is being evaluated.
24 So then you get to the types of plans that can be proposed.
25 And with respect to that distributable value that's available,

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1 the insurance companies have the ability to say, hey, we'll
2 take fourteen, eighteen, whatever our debt is, and we'll
3 convert it to some sort of equity instrument. Big beneficial
4 effect on a reorganization. The bondholders have said, we can
5 do certain things with the bonds that the debtor has issued to
6 us, and we've raised other cash.

7 The debtor is constrained, I mean constrained by
8 financing sources that may come from securitization if allowed
9 by the State of California, additional equity issued by its
10 current stockholders. So all of those pieces of the puzzle on
11 your Part B, the sort of the second half, we kind of don't have
12 clarity yet, until we know are we dealing with the
13 distributable value and how would that get financed, in a way;
14 how does that get treated; or are we dealing with some smaller
15 number, in which case the debtors' path is very clear.

16 And again, not trying to characterize, but I think
17 that's the nut we need to crack before --

18 THE COURT: Well, you're kind of looking at it from
19 distributable value and going backwards. What if we turn it
20 around the other way and say -- imagine you're drafting the
21 plan, and you know what the round number of nontort claims are
22 because there's a whole -- it's out there; I mean, we all know
23 what that is.

24 MS. DUMAS: Exactly.

25 THE COURT: And we then go to what is likely to be

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1 either a discounted amount or an agreed amount of the
2 subrogation claimants. And then we take something like the
3 settlement of a billion. And then what's missing for your
4 constituency is the product of the estimation process. And if
5 it's a lower number, it's an easier process. If it's a higher
6 number, then the company has to deal with the shortfall, if you
7 will. And "shortfall" is the wrong word. To use your
8 mathematics, eighteen plus one plus ten is a much different
9 analysis than eighteen plus one plus forty.

10 MS. DUMAS: Exactly right. And --

11 THE COURT: But therefore what? I mean, and that's
12 all the more reason why two things have to happen that can't
13 happen in this room today: the estimation has to happen, and
14 Mr. Karotkin and his clients and the advisors and the money
15 sources have to figure out a way to meet that minimum threshold
16 of those three components. Right? So --

17 MS. DUMAS: Absolutely. And --

18 THE COURT: -- it's the same thing. And if they are
19 able to get a number that is within the enterprise value as you
20 see it, then the problem is solved --

21 MS. DUMAS: Well --

22 THE COURT: -- if your clients -- particularly if they
23 consent to it.

24 MS. DUMAS: Absolutely. And --

25 THE COURT: Okay.

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1 MS. DUMAS: -- I'm also saying that that is -- I think
2 everybody in the room realizes that PG&E doesn't have more
3 value than it has. Right? So there's not an intention, on the
4 part of tort claimants, to say, our number is forty billion or
5 eighty billion and deal with it. We're working within the
6 parameters of the distributable value and an insolvent company.

7 THE COURT: Yeah, but I'm --

8 MS. DUMAS: So --

9 THE COURT: -- appreciate your comments; I'm not sure
10 what you want me to do with them today. I'm trying to talk
11 about how to deal with problems that we can deal with. And one
12 thing that we can deal with is be innovative, like, toss the
13 rule book out on "have to do a disclosure statement first". Do
14 it separately. We've got a different set of rules because the
15 debtors have to deal with CPUC processes.

16 MS. DUMAS: Um-hum.

17 THE COURT: I mean, those are things that I thought we
18 were going to focus on today, and then --

19 MS. DUMAS: And it is. It is.

20 THE COURT: -- plus the issue of how to get the
21 estimation trial --

22 MS. DUMAS: Yeah.

23 THE COURT: -- up and running.

24 MS. DUMAS: Your Honor, you're right. And I jumped a
25 little bit ahead; I didn't intend to.

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1 THE COURT: That's all right.

2 MS. DUMAS: The Court gave the debtors the first crack
3 by continuing the exclusive period.

4 THE COURT: Um-hum.

5 MS. DUMAS: And I guess what I'm suggesting is that,
6 until it becomes evident, some of these financial breakdowns
7 and whether my clients are right that their aggregate claims
8 are in excess of the distributable value and therefore we have
9 to cut back, the TCC is really unable to determine whether it
10 is going to continue to work with the debtor along the lines of
11 a debtor plan or whether the TCC will conclude that one of the
12 other proposals that had been put out there as maybe improved,
13 is a way that the TCC wants to then come back to the Court and
14 say --

15 THE COURT: No, I understand.

16 MS. DUMAS: -- we're going down a different path.

17 THE COURT: But where we are today is I made a
18 decision, right or wrong, to give the debtor a chance, and -- a
19 loan. And the debtor, through counsel just today, reiterated
20 they're on track to file a plan. Now -- and we're not going to
21 worry about the disclosure statement, for the moment. If that
22 plan is bogus and anybody can tell it's bogus, I probably would
23 be very receptive to terminating exclusivity very quickly. I
24 think Mr. Karotkin even conceded the point; he'd be -- he would
25 concede that it would probably be what'd happen next.

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1 If the plan is credible, to use my -- one of my terms,
2 but your clients don't like it and don't think it's legally
3 permissible or couldn't be confirmed without your consent, then
4 you can renew your argument to terminate exclusivity.

5 But I think the premise on this, from my point of
6 view, and partly why I made the decision not to terminate
7 exclusivity, was I was persuaded that, given the looming June
8 30th, 2020, plus the CPUC requirements, plus the complexity of
9 estimation, regardless of how it's done and how many judges you
10 need -- because there are different opinions about that, but
11 now we're told we know at least two who are involved; one
12 doesn't -- I don't know the name of that judge, but he's down
13 the street at the superior court.

14 MS. DUMAS: McAllister.

15 THE COURT: And whether there's two federal judges or
16 one is not something I need to -- we need to worry about
17 today. That's what we're doing.

18 So it seems to me that, until I'm presented with
19 something that suggests that the debtors' plan is not worth
20 giving the next round to --

21 MS. DUMAS: Yeah, and I'm certainly not suggesting --

22 THE COURT: -- that's what we're going with.

23 MS. DUMAS: -- that's the case --

24 THE COURT: Okay.

25 MS. DUMAS: -- because nobody has seen it.

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1 THE COURT: Yeah, and that's --

2 MS. DUMAS: And --

3 THE COURT: And therefore, that's the product of
4 negotiation. That's why the debtor and the committee better --
5 hopefully will continue to --

6 MS. DUMAS: Yes. And perhaps my --

7 THE COURT: -- have conversations.

8 MS. DUMAS: -- perhaps my opening comments were
9 intended to be a segue to how we, therefore, see the estimation
10 proceeding going forward, because when we have such a big, sort
11 of, difference of views, how to --

12 THE COURT: Um-hum.

13 MS. DUMAS: -- how to get to that difference of views
14 in the most expedient way because ten billion and forty
15 billion -- somebody's wrong. And given the time frame in which
16 we're dealing, the TCC has put a lot of work into a targeted
17 program, which Mr. Julian is going to describe, because under
18 the circumstances -- again, the ten versus forty -- or fifty --
19 we just can't see how the debtors, all out, "we're going to
20 fight every issue on every fire," is going to work in the
21 context. And maybe they have a plan for eventually providing
22 discovery and eventually making concessions of what issues
23 they're really contesting fire by fire. But I'm just trying to
24 say, look, we all need to figure something out between ten and
25 forty or fifty in a pretty compressed time frame.

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1 So I'll leave it at that. I know that --

2 THE COURT: Well, but I want -- do you have --

3 MS. DUMAS: Yes, sir.

4 THE COURT: -- you have no quarrel with my desire to,
5 kind of, simplify the disclosure statement side of it, do you?

6 MS. DUMAS: Absolutely not. The extent to which that
7 the -- I guess, the disclosure statement is usually the
8 document in which the plan assumptions and projections are
9 included. And as long as we have that financial information,
10 we don't need the Manhattan or even the San Francisco phone
11 book.

12 THE COURT: No, you don't. You need about three
13 pages.

14 MS. DUMAS: Exactly.

15 THE COURT: Right?

16 MS. DUMAS: We need financial information, Your Honor,
17 which is why we've been pressing that.

18 THE COURT: Okay, but this goes back to the same
19 subject, as Mr. Karotkin said. He can't put in the number
20 until there is either consensual agreement, which is great if
21 it happens, or there is a determination by the superior court
22 plus the district court. Right?

23 MS. DUMAS: True.

24 THE COURT: Okay.

25 MS. DUMAS: And fortunately for myself and Mr.

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1 Karotkin, that issue is Mr. Orsini's and Mr. Julian's to deal
2 with.

3 Thank you, Your Honor.

4 THE COURT: And Mr. Dunne's going to come to the
5 rescue.

6 MR. DUNNE: Your Honor -- we'll see about that, Your
7 Honor. For the record, Dennis Dunne from Milbank LLP, on
8 behalf of the official committee of unsecured creditors.

9 I have a couple comments, but let me start with the
10 question you asked, Your Honor. We're perfectly fine with
11 proceeding in the manner Your Honor suggested. There's no
12 reason why we have to stick to the normal conventions in this
13 case. There's very little that's, kind of, normal in this
14 case. And so to the extent we can build a better mousetrap on
15 the disclosure statement, let's try.

16 THE COURT: Okay.

17 MR. DUNNE: Let me just address one point, and it's
18 under -- it has to do with the scalability of the plan as we
19 land at different levels for the tort victims. And we
20 certainly hope and expect that we're dealing with a solvent
21 estate. I was pleased to hear Ms. Dumas' comments about how
22 the tort committees see it kind of the same way, that they're
23 kind of reverse-engineering from distributable value to try to
24 get to the same place. But on the numbers that Ms. Dumas was
25 proposing -- eighteen billion for a subrogation claim, a

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1 billion for the public-entity group that settled to date, and
2 maybe forty billion for the individual plaintiffs, plus the
3 debt for borrowed money and the other liquidated -- that
4 exceeds the enterprise value of the company under any kind of
5 reasonable scenario.

6 THE COURT: Well, I suspect she probably understands
7 that.

8 MR. DUNNE: And I think -- I hope so. I think so,
9 too.

10 THE COURT: Yeah.

11 MR. DUNNE: And so that brings me to the other point,
12 which is, whatever gets filed on September 9th is going to have
13 some amount of committed capital. And if Your Honor kind of
14 lands on the estimated tort size near that amount of committed
15 value, I think we all kind of know that that works. As you --
16 but I -- the point I'm making is it's not linear as you scale
17 that up. And what I mean by that is, as Your Honor was saying,
18 if you land, like, 2X or 3X on that number, a number of things
19 may happen; they may not: The committed capital might not be
20 there. The vehicle for raising the capital in the plan, the
21 original structure for doing so, might not be workable at
22 particular levels. You might have to combine a number of, kind
23 of, funding sources to make the plan work. And you may have to
24 ask other classes of creditors to be impaired. You may not be
25 able to raise --

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1 THE COURT: Right.

2 MR. DUNNE: -- the cash to unimpair them. You may ask
3 them to take equity. And that raises a whole bunch of issues
4 that you still could have a solvent estate but you're going to
5 be dealing with those types of plan issues --

6 THE COURT: Right.

7 MR. DUNNE: -- which is why it leads us all to --
8 there's only so much we can do today, Your Honor. We're going
9 to have to be in a mode of, kind of, constant reassessment and
10 reevaluation --

11 THE COURT: Right. Well, that's my sense too.

12 MR. DUNNE: -- as we go down and pivot. But for
13 today, Your Honor, that's how we're seeing it. And we support
14 the efforts to kind of streamline the disclosure statement and
15 to move forward.

16 THE COURT: Well, obviously my goal of streamlining
17 the disclosure statement is to get a distraction out of the
18 way. Unfortunately, if the numbers or the dynamics are such
19 that you have to impair, then you have to disclose. And
20 that's --

21 MR. DUNNE: The disclosure statement --

22 THE COURT: -- that's --

23 MR. DUNNE: -- will look different in that world.

24 THE COURT: Yeah, the process will be different. The
25 timing and the cost and the confusion -- it's just one of those

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1 things it'd be great if we can avoid. But you're making a good
2 pitch for your two colleagues on both sides of you to get their
3 clients and get a resolution.

4 MR. DUNNE: Exactly. We'd like to be helpful with
5 that involvement, because we care very deeply about whether we
6 are -- that we will have a solvent estate with unimpaired
7 creditors, exactly like everybody was suggesting. But we need
8 to cut some deals and reach some resolution in order to do it.
9 Thank you.

10 THE COURT: So are we going to hear from Mr. Kornberg
11 after all this? Is he going to help me out?

12 MR. QURESHI: Your Honor, if I could just --

13 THE COURT: Oh, yes, sir.

14 MR. QURESHI: -- before Mr. Kornberg. For the record,
15 Abid Qureshi, Akin Gump Strauss Hauer & Feld --

16 THE COURT: Mr. Qureshi. Yes.

17 MR. QURESHI: -- on behalf of the --

18 THE COURT: Good to see you again.

19 MR. QURESHI: -- ad hoc noteholder group.

20 Your Honor, two things I wanted to raise. First of
21 all, we, too, have no opposition to a streamlined process with
22 something other than the normal disclosure statement. It is,
23 however, important, vis-a-vis the bondholders, that we
24 understand -- to the extent the debtors are purporting to
25 unimPAIR the bondholders in their plan, that we understand,

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1 through whatever it is that they file on or before September
2 the 9th, whether they intend to fully recognize the contractual
3 rights of the bondholders because if they don't but they are
4 otherwise seeking to unimpair us, that will of course be a
5 litigable issue.

6 THE COURT: And listen, we're all in this together --

7 MR. QURESHI: Yeah.

8 THE COURT: -- trying to make things happen. And by
9 saying I want to simplify the disclosure statement, I don't
10 want Mr. Karotkin and his side to think that's an invitation to
11 hide the ball on what their proposal is. So I'm almost tempted
12 to use one of my favorite terms: let's have a term sheet for
13 the disclosure statement, or an outline of the disclosure
14 statement, or if nothing else, at least a statement as to -- I
15 mean -- let me rephrase that. I don't know what he's going to
16 present by a plan, but I know that a well-drafted plan has the
17 classes right in it. And if you say Class 1 is the bondholders
18 and Class 2 are the subordinated something and Class 3 are the
19 victims, you can also add -- certainly for these purposes, you
20 could say whether they are impaired or not, which is not
21 uncommon in any simple drafting plan, right?

22 So if he puts your client in Class 1 and says
23 "unimpaired", that to me is a concession that perhaps -- maybe
24 not but, if you're unimpaired, you got -- you don't get to
25 vote; you get to object if there's some legal -- you know these

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1 rules. I'm not telling you what you don't know. But it
2 simplifies the process, right?

3 MR. QURESHI: And we assume whatever does get filed,
4 Your Honor, will be sufficiently clear with respect to those
5 issues.

6 THE COURT: And --

7 MR. QURESHI: The second thing I wanted to --

8 THE COURT: Yeah.

9 MR. QURESHI: -- raise, Your Honor, goes to the
10 financing. Your Honor, we, of course, read very carefully Your
11 Honor's ruling on our motion to terminate exclusivity. We
12 think it is very important that, although Mr. Dunne, of course,
13 is correct that we will not know until we're done with
14 estimation exactly what that universe looks like, we need to
15 understand what financing commitments the debtors have or do
16 not have with respect to whatever plan is going to be filed by
17 September the 9th.

18 And so we think it is important, Your Honor, that the
19 financing commitments that do exist with respect to that
20 plan -- that the underlying commitment letters get shared at
21 least with the parties, if not filed with the court. And the
22 reason for that, Your Honor, is if that financing is not there,
23 if it is subject to contingencies, whether those contingencies
24 may be legislative contingencies or other contingencies, or if
25 the aggregate amount of that financing is not deemed by the

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1 parties, by the bondholders, to be sufficient, Your Honor, we
2 are standing by and ready to renew the motion to terminate if
3 the circumstances are appropriate. And --

4 THE COURT: Well, this goes back to my statement
5 about -- first of all, Mr. Karotkin said they're on track to
6 file by the deadline they said they would. My intention is to
7 set a hearing promptly, not necessarily the next morning but
8 soon after, this kind of conference. So --

9 MR. QURESHI: Yeah.

10 THE COURT: -- if people like you stand up and say, we
11 can't make any sense out of it; we don't know how it's possibly
12 feasible, Mr. Karotkin's going to have to do some explaining
13 why you have to ask that question.

14 So the burden is on him to be disclosing, at least
15 privately or one-on-one with the constituency -- everybody
16 likes to use "the stakeholders"; that's not my term -- but the
17 stakeholders, he's got to do it. He doesn't have to file a
18 disclosure statement. He's got to make sure you know what the
19 deal is.

20 MR. QURESHI: And, Your Honor, we --

21 THE COURT: Okay?

22 MR. QURESHI: -- we think that type of a conference
23 should be scheduled sooner rather than later. Again, because
24 of the legislative deadline, this is not a situation where we
25 have the luxury of time --

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1 THE COURT: Right.

2 MR. QURESHI: -- so that we can see whether the
3 financing is there and, if it's not, somebody else can come
4 forward. We need to know now.

5 THE COURT: No, I understand. Let me just check.

6 Mr. Karotkin, am I right; the regular PG&E schedule we
7 have is for the 10th and 11th, right?

8 Yeah, see, that would be -- that seems to be a little
9 bit tight. I would want to -- I wouldn't particularly want to
10 have a hearing on the morning after, when I expect you'll
11 haven't had a chance to decide. Let's defer that for --

12 MR. QURESHI: Sure.

13 THE COURT: -- the time being. The intention --
14 relying on Mr. Karotkin's statement -- he can rely on my
15 statement that we will have a prompt hearing right after that,
16 not to have formal objections or to have anything more than,
17 okay, what's the reaction. And if the TCC or the senior
18 bondholders or the subrogation group say, we're good to go, we
19 have enough information, that's helpful. If they say, no, we
20 don't, then we'll figure out what to do next. Okay?

21 MR. QURESHI: Thank you, Your Honor.

22 THE COURT: Okay.

23 Mr. --

24 MR. MARSHACK: Good morning, Your Honor. Richard
25 Marshack, Marshack Hays --

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1 THE COURT: Mr. Marshack.

2 MR. MARSHACK: -- on behalf of the --

3 THE COURT: Yeah.

4 MR. MARSHACK: -- SLF --

5 THE COURT: Right. Mr. Marshack --

6 MR. MARSHACK: -- fire victims.

7 THE COURT: -- good to see you. What --

8 MR. MARSHACK: Your Honor, would the Court -- I think
9 it'd be -- it'd provide a great benefit to everybody if the
10 Court would elaborate a little bit on what the Court means by a
11 streamlined disclosure statement. I have a --

12 THE COURT: Well, I think the bankruptcy lawyers
13 probably know what I'm talking about.

14 MR. MARSHACK: I am a --

15 THE COURT: And I don't want to --

16 MR. MARSHACK: I am a bankruptcy lawyer --

17 THE COURT: Well --

18 MR. MARSHACK: -- Your Honor. So --

19 THE COURT: Well, okay. Are you familiar with --

20 MR. MARSHACK: I mean, I'm thirty-seven years --
21 thirty-five as a bankruptcy trustee.

22 THE COURT: I don't -- I just don't know you. That's
23 all.

24 MR. MARSHACK: Okay.

25 THE COURT: Are you familiar with the Northern

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1 District simplified combined plan and disclosure statement?

2 MR. MARSHACK: I am not, Your Honor. And that's why
3 I'm -- that's typically done in a small case.

4 THE COURT: Oh, yeah.

5 MR. MARSHACK: And here's what I'm saying --

6 THE COURT: I'm not going to use that form for this
7 case.

8 MR. MARSHACK: -- what I'm trying to say to this Court
9 is, I think everybody's on board. But we don't want to
10 disappoint you. So we want to know what your expectations are
11 for a simplified disclosure statement. And I did --

12 THE COURT: So quoted the statute in my order, right?
13 Adequate information for a hypothetical -- and then I put in
14 with a question mark -- investor -- that's what the statute
15 says -- of the relevant class, to make an informed judgment.

16 What will your constituents, your fire victims, need
17 to know how to vote up or down on this plan? To me, it
18 couldn't be more simple than: when am I going to get paid and
19 how much am I going to get -- or at least, if not, how much in
20 terms of dollars to a particular victim, at least in the
21 aggregate what's it going to mean for my fellow victims and me,
22 what are we likely to get?

23 To me, I don't know that you need much more than that.
24 But so I envision a very simple disclosure statement. And that
25 doesn't mean that all the things you've heard the other lawyers

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1 representing the different financial institutions are being
2 told you don't get any information. You get all the
3 information you need to know what your treatment is. You're
4 just not a voter, therefore we don't have a disclosure
5 statement for you. We have what you need to make sure you are
6 not going to be challenging or objecting to this plan.

7 MR. MARSHACK: Okay, so --

8 THE COURT: Okay?

9 MR. MARSHACK: -- I understand how the Court gets to
10 what's your treatment, but previous speakers at this podium
11 talked about enterprise value and things --

12 THE COURT: I think Ms. Dumas was talking about it in
13 a big-picture sense. She also acknowledged that for today's
14 purposes, I think I'll speak -- she can clarify it -- she was
15 talking big terms but not things that are plan-and-disclosure-
16 statement issues.

17 In other words, she and the torts committee believe
18 that -- come on, let's not kid ourselves -- that the aggregate
19 claims from the Tubbs fire and all the other fires that haven't
20 been quantified, are far greater in amount than what were
21 scheduled or at least proposed in the two competing plans that
22 did not get approved for consideration. And if the debtor has
23 a plan that it files on the 9th -- they file on the 9th, that
24 says we're going to have a fund, a capped trust of eighteen or
25 twenty billion, I suspect that the TCC is not going to be very

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1 supportive of that and probably would not vote for it.

2 So --

3 MR. MARSHACK: Your Honor --

4 THE COURT: Okay?

5 MR. MARSHACK: -- my motives are not to delay the
6 process. To the contrary. My motives are to get an early
7 approval of a plan and disclosure statement. And I come to
8 this Court and simply say please give us clarity on what your
9 expectations are, because you have to approve the disclosure
10 statement. And that's the --

11 THE COURT: No, to me --

12 MR. MARSHACK: -- only reason I'm here.

13 THE COURT: -- the disclosure statement is the easiest
14 task in the world. The question is: what is going to be
15 disclosed -- or apart from that, just pretend that your class
16 of victims say fine, if I'm going to be paid in full by a year
17 from now or six months from now, I'll vote for it.

18 The question is, do we -- is it a confirmable plan?
19 What are the confirmation standards? The confirmation
20 standards are a variety of things that are -- start with
21 Section 1129, disclosure is just one item for the voters.

22 So if the senior bondholders say, wait, you can't cram
23 down on me; or you can't -- you're actually impairing me even
24 though you say you're not; or I object to confirmation because
25 it violates the absolute-priority rule; or something --

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1 something that bankruptcy lawyers will have an argument about;
2 or most importantly, it's not feasible; or it's not acceptable
3 to the CPUC. Those are confirmation issue that aren't
4 disclosure-statement voting issues.

5 I'm really just focusing on the -- and simplifying
6 that prospect.

7 So you say you clearly want an early plan and
8 disclosure statement. Well, so does everybody. But --

9 MR. MARSHACK: No, no. We share your objectives. We
10 just --

11 THE COURT: But that's the estimation. That's the
12 hang-up, right?

13 MR. MARSHACK: Correct. We share your objective. We
14 just want to make sure -- at least I want to make sure we're on
15 the same page as you with regard to your definition of a
16 simplified disclosure statement.

17 I've taken up enough time of this Court.

18 THE COURT: No, no. You're take -- and I -- you've
19 been here several times, but I didn't know you had the
20 bankruptcy background.

21 MR. MARSHACK: Yes.

22 THE COURT: And I don't mean to act snobby to lawyers
23 that I don't know, who I don't know what they know about
24 bankruptcy.

25 So you tell me. If I said to you, what is the easiest

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1 thing you could possibly do in a disclosure statement, if you
2 were doing it, what would you put? Why do you need the
3 Manhattan phone book? Wouldn't three pages be enough?

4 MR. MARSHACK: I don't. I don't. And frankly, you
5 know that ninety percent of the people aren't going to read it.
6 But no, I applaud this Court's direction.

7 THE COURT: That's --

8 MR. MARSHACK: What do you need? You need the amount
9 of the -- you need what the value of the entity is, what the
10 debts are, the funding, summary of the plan --

11 THE COURT: Again, I'm not even sure you need all
12 those things. But that's for easy discussion.

13 I don't care if it's acceptable to the victims that
14 it's a little more elaborate, but I don't think we need to
15 burden them with all kinds of things that go into a more
16 traditional disclosure statement, like a public -- a 10-Q or a
17 10-K. I mean, imagine how -- talk about what percentage of
18 people read those, right? The securities plaintiffs' lawyers,
19 they probably do. That's about it.

20 MR. MARSHACK: The only thing we need, I think, Your
21 Honor, is if you're -- if the victims are going -- if their
22 claims are going to be impaired -- if they're not going to paid
23 in full, we need to understand --

24 THE COURT: Well, they're going to be impaired no
25 matter what, because they're not going to be paid on the

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1 effective date. Right?

2 MR. MARSHACK: If the victims are not going to be paid
3 in full, the disclosure statement has to explain why.

4 THE COURT: Yeah, I agree.

5 MR. MARSHACK: Thank you.

6 THE COURT: So your input will be welcome on the
7 disclosure statement.

8 MR. MARSHACK: Thank you, Your Honor.

9 THE COURT: Okay. We have -- someone wants to speak?
10 Yes.

11 Come on in. It's still morning.

12 MS. BROWNSTEIN: Good morning, Your Honor. Beth
13 Brownstein from Arent Fox on behalf of BOKF as indenture
14 trustee for the senior notes in the outstanding amount of
15 seventeen-and-a-half billion dollars.

16 THE COURT: Right, I got your papers. Um-hum.

17 MS. BROWNSTEIN: Your Honor, we are -- or the
18 noteholders are a significant stakeholder in the cases and have
19 an interest, of course, that the debtors emerge a viable,
20 reliable, financially sound company. And I think Your Honor
21 had identified some of the concerns that noteholders may have:
22 whether or not holders are going to be unimpaired under the
23 plan; what does "unimpaired" mean; is the plan feasible? And
24 the indenture trustee intends to be part of that process in
25 analyzing the plan, and we'll be back before Your Honor, as you

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1 said, after -- once the plan is filed and once we have seen the
2 details of how the noteholders are going to be treated.

3 THE COURT: Okay. Great. Thank you.

4 MS. BROWNSTEIN: Thank you.

5 MR. JOHNSTON: We keep Mr. Kornberg waiting. Your
6 Honor, Jim Johnston of Jones Day on behalf of certain
7 shareholders. Just three quick points.

8 One, there are going to be more than two impaired
9 classes in this case, because the class of shareholders will be
10 impaired no matter how you look at valuation.

11 The means of execution, whether it's new equity, new
12 debt, some combination of both will dilute the shareholders.

13 THE COURT: Okay. Okay.

14 MR. JOHNSTON: Two --

15 THE COURT: Then we might have to have different
16 disclosure statements.

17 MR. JOHNSTON: Perhaps. Although I certainly think
18 that streamlined is the way to go.

19 THE COURT: Okay.

20 MR. JOHNSTON: And we are in extreme agreement with
21 Your Honor that less is more in this context and that we should
22 be thinking outside-the-box.

23 THE COURT: Okay.

24 MR. JOHNSTON: We fall on the side of the debtors
25 that, call it, total distributable value vastly exceeds the

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1 amount of claims that will be allowed in the case. We think
2 this is a solvent debtor.

3 And so we disagree with the suggestion of Ms. Dumas
4 and the TCC that we are going to get anywhere close to that
5 line. And I just want to react very briefly to one set of
6 numbers that she threw out, which is the eighteen billion
7 dollars in alleged insurance subrogation claims. She said the
8 insurers have already made those payments and so the debtors
9 start with a baseline of eighteen billion dollars.

10 As we understand it, they haven't made eighteen
11 billion yet. But even if you assume that they ultimately will
12 make those payments, a very large proportion of those relates
13 to Tubbs, eight billion dollars or so.

14 So we can't start with the baseline that we're talking
15 about eighteen billion dollars in subrogation claims. The San
16 Francisco Superior Court will have a lot to say about that, I
17 think. And Your Honor ultimately will in the estimation
18 context.

19 THE COURT: But I think -- but I think she conceded
20 that the number is subject to these other things that are
21 taking place, and Tubbs is a huge swing. That's why it's
22 going.

23 MR. JOHNSTON: Exactly. And estimation will give us
24 some clarity on the point. I just didn't want that to go
25 unremarked upon.

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1 THE COURT: Okay. Okay.

2 MR. JOHNSTON: My third point relates to what you
3 called the meat on the bones, what Mr. Karotkin called the
4 means of execution. As you heard last hearing and in the
5 papers, my clients and other shareholders have stepped up with
6 a very large commitment --

7 THE COURT: Um-hum.

8 MR. JOHNSTON: -- for equity financing. The debtors
9 and we are confident that adequate financing will be available
10 from many sources: equity, debt, Oldco, utility. But Mr.
11 Karotkin and Mr. Dunne are correct in that this is a very fluid
12 concept. And the how much is completely interrelated with the
13 means of execution. You can't have unlimited commitments for
14 financing up to the sky, and you can't have unlimited
15 commitments on the time period. So I --

16 THE COURT: Right.

17 MR. JOHNSTON: -- completely agree that this is going
18 to be a fluid situation, and I think that also counsel's in
19 favor of Your Honor's outside-the-box procedure for plan and
20 disclosure statement.

21 THE COURT: Okay, thank you, Mr. Johnston.

22 MR. JOHNSTON: Thank you.

23 THE COURT: Where is he? Mr. Kornberg, where are you?
24 Maybe we should take a break for lunch. No, come on. Nice to
25 see you.

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1 MR. KORNBERG: Good morning, Your Honor.

2 THE COURT: You're not really going to talk today, are
3 you?

4 MR. KORNBERG: Alan Kornberg from Paul, Weiss,
5 Rifkind, Wharton & Garrison for the California Public Utilities
6 Commission. Your Honor, before I address the specific
7 questions that you raised in your August 20 order, I thought
8 maybe just a few words about the work the Commission has to do
9 might be helpful --

10 THE COURT: Sure.

11 MR. KORNBERG: -- not only for the Court, but frankly,
12 for many parties-in-interest, because there has been, I think,
13 some confusion or misunderstanding about our process.

14 THE COURT: Please do.

15 MR. KORNBERG: So the Commission expects to enter that
16 is called an order instituting investigation -- and I'll refer
17 to that as the "bankruptcy OII" -- relating to these bankruptcy
18 cases in late September following PG&E's filing of its plan.

19 THE COURT: That's the triggering event? You got to
20 have something --

21 MR. KORNBERG: Correct.

22 THE COURT: -- to trigger it? Okay.

23 MR. KORNBERG: Correct, Your Honor. The filing of the
24 plan will permit the Commission to begin the bankruptcy OII.
25 That is a significant event, because the initiation of the

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1 bankruptcy OII is the beginning of the Commission's required
2 processes related to these cases.

3 That is a multistep process that will begin, and the
4 ultimate goals of that multistep process are the formulation
5 and approval of a global settlement between the Commission and
6 PG&E relating to a variety of outstanding issues of concern to
7 the Commission, not only in the Chapter 11 cases, but in
8 certain ongoing regulatory proceedings that I'll refer to in a
9 minute.

10 THE COURT: But pending settlement of things that are
11 already in the pipeline that -- where there are differences.

12 MR. KORNBERG: Correct, some that are in the pipeline,
13 some that may be in the pipeline. And then also, the other
14 goal, of course, is the Commission approval of the Chapter 11
15 plan that will resolve these cases. And of course, approval of
16 that plan necessarily involves ratemaking --

17 THE COURT: Right.

18 MR. KORNBERG: -- and other questions that are within
19 the Commission's jurisdiction.

20 So as PG&E and others well know, accomplishment of
21 these two goals -- the global settlement, hopefully that will
22 be reached, and a formal Commission approval of the plan -- are
23 conditions to the effectiveness of any Chapter 11 plan. And
24 I'm sure as Your Honor will recall, that was the case also in
25 the first PG&E.

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1 THE COURT: Well, and it's clear right on the face of
2 AB1054.

3 MR. KORNBERG: And that's correct.

4 THE COURT: I mean, that's where I got the clue of
5 what you have to deal with, and you said it before at the prior
6 hearing, yeah.

7 MR. KORNBERG: And as Your Honor just mentioned, these
8 goals have to be achieved before June 30, 2020, if PG&E is to
9 participate in the Wildfire fund created by AB1054.

10 So the issues that -- in very broad-brush terms, the
11 issues requiring resolution -- I think this is important for
12 people to understand -- will be negotiated by PG&E, on the one
13 hand, presumably as plan proponent, and Commission advisory
14 staff, in the context of confidential settlement discussions.
15 Indeed, the parties have met to frame and discuss the issues
16 that require resolution.

17 Once the bankruptcy OII is commenced, Commission
18 advisory staff and PG&E will begin the settlement discussions
19 in earnest. So the important takeaway here, Your Honor, is
20 that that process is going to begin promptly after the plan is
21 filed. There are no preliminary approvals or interim
22 adjudications along the way, and I'll explain why that is the
23 case.

24 When these discussions hopefully bear fruit in the
25 form of the global settlement agreement tied to PG&E's plan of

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1 reorganization, that agreement -- this global settlement
2 agreement will be submitted for consideration by the
3 commissioners following evidentiary hearings before the
4 Commission in the bankruptcy OII. So again, first, there is a
5 process where Commission advisory staff will negotiate with
6 PG&E. When those discussions have reached their conclusion,
7 then it will be presented to the commissioners. In that phase
8 of the bankruptcy OII, many parties will have an opportunity to
9 be heard, most notably ratepayer representatives and advocates
10 and safety advocates.

11 In the bankruptcy OII, the Commission will have to
12 evaluate and make certain findings concerning the plan and the
13 related transactions. And Your Honor has already referred to
14 AB1054. Of critical importance for PG&E to be eligible to
15 participate in the Wildfire fund under that statute, when the
16 Commission approves PG&E's Chapter 11 plan, it must make
17 findings relating to corporate governance and safety culture,
18 consistency with the state's climate goals, rate neutrality,
19 and proper recognition of contributions by ratepayers, if any.

20 THE COURT: Yeah, let me interrupt you. Those are the
21 four -- or three paragraphs that I read right from the bill.
22 And you're reading the same place.

23 MR. KORNBERG: Correct. But let me go on from that,
24 Your Honor.

25 THE COURT: Okay.

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1 MR. KORNBERG: Because the Commission's work is not
2 limited to the findings required by that provision of AB1054.
3 Under the Commission's existing ratemaking authority, the
4 Commission must do some other things as well. The Commission
5 has to evaluate the reasonableness of the rates that will be in
6 effect upon PG&E's exit from bankruptcy. We're all aware of
7 that, I think. But the Commission also has to approve the
8 respective percentages of debt and equity for the reorganized
9 company's capital structure. The Commission --

10 THE COURT: Again, interrupt you. That's their
11 version of the feasibility determination that the bankruptcy
12 court has to make, right?

13 MR. KORNBERG: Well, but it's also taken from a
14 different perspective --

15 THE COURT: I understand.

16 MR. KORNBERG: -- as one can imagine.

17 THE COURT: I understand, but I mean, they have to
18 determine the company can do what it says it's going to do.
19 The bankruptcy court has to make the same determination.

20 MR. KORNBERG: Well, actually, it's a little
21 different --

22 THE COURT: Okay.

23 MR. KORNBERG: -- because the Commission also has
24 to -- well, the bankruptcy court does this as well, but the
25 Commission has to also authorize the issuance of the debt and

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1 the issuance of the equity financing contemplated by the plan.

2 THE COURT: No, I understand. I understand. I mean,
3 those are the -- those are the kinds of things that -- it's a
4 parallel track. I'm not suggesting that the Commission's doing
5 the bankruptcy court's work or vice versa. It's doing its own
6 work, but it's consistent with what, in a nonregulated entity,
7 you have to make sure other certain things are complied with.

8 MR. KORNBERG: Correct, Your Honor.

9 THE COURT: Okay.

10 MR. KORNBERG: And it also has to set the reorganized
11 company's rate of return on its equity. That's another
12 responsibility.

13 The global -- then I mentioned there's a global
14 settlement of a variety of matters that are pending before the
15 Commission. So for example, we would imagine that the global
16 settlement between the Commission and PG&E must also determine
17 PG&E's liability, if any, for fines and penalties relating to
18 its pre-petition conduct with respect to the 2017 and 2018
19 wildfires.

20 There is a pending OII concerning PG&E's violation of
21 locate-and-mark rules relating to its natural gas and electric
22 infrastructure. That involves pre-petition conduct. That also
23 requires resolution.

24 And finally, there is the so-called safety culture OII
25 in which issues relating to potential changes in PG&E's

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1 corporate structure have to be addressed.

2 Your Honor asked -- well, before I address that
3 question, let me also say a word about what these processes
4 look like. The statutes governing the Commission proceedings
5 require the Commission to exercise a quasi-judicial function
6 involving separate evidentiary hearings and factual findings.
7 And accordingly, it can't prejudge the issues that will come
8 before it.

9 In the bankruptcy OII, for example, the Commission
10 will have to develop a factual record and resolve all material
11 issues raised by the parties in a detailed decision that
12 contains separately stated findings of fact and conclusions of
13 law.

14 Given the myriad issues before it, Commission advisory
15 staff can and will, as I mentioned before, begin its formal
16 work immediately upon opening of the bankruptcy OII. Indeed,
17 the preliminary work it has already done sets the stage for
18 that to happen. Ultimately, however -- and this I think is of
19 concern to Your Honor and is relevant to questions you've asked
20 today -- the Commission will require a definitive, confirmable
21 plan to facilitate the deliberations and make the required
22 rulings concerning the plan.

23 Now, to answer the specific question raised by the
24 Court in its order last week, the Commission doesn't require
25 anything from Your Honor to begin the process that I've

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1 described. But we would anticipate -- and this relates to
2 conversations about the disclosure statement -- clearly, any
3 disclosure statement in this case will describe that successful
4 conclusion of the Commission process is a condition precedent
5 to the effectiveness of any Chapter 11 plan.

6 THE COURT: But that's just a statement. I mean,
7 that --

8 MR. KORNBERG: Correct.

9 THE COURT: -- that's just a statement of the law.

10 MR. KORNBERG: Correct.

11 THE COURT: It's like approval of some other agency.
12 I mean, it doesn't have to explain the process, just the end
13 result.

14 MR. KORNBERG: Correct. It's a significant condition.

15 THE COURT: Right.

16 MR. KORNBERG: I would assume that the disclosure
17 statement, no matter how brief -- and we certainly support the
18 idea of a slim disclosure statement -- will have significant
19 conditions to effectiveness described.

20 THE COURT: Right, but again, I think I'm stating the
21 obvious. In one sentence, it could say the plan is not
22 effective unless the Commission approves. It doesn't have to
23 have a --

24 MR. KORNBERG: Right, an exegesis on it.

25 THE COURT: -- a long discussion on what the -- okay.

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1 Where to begin.

2 MR. KORNBERG: Okay, so how does this all relate to
3 the estimation proceedings? I know that's an issue of concern
4 to the Court. As Your Honor has repeatedly observed, the
5 overarching purpose of these cases is the quantification and
6 resolution of payment of the wildfire victims' claims and those
7 of their insurers. Completion of the estimation proceedings
8 here and elsewhere, or hopefully a settlement of those
9 liabilities, is also critical to the Commission's work, and let
10 me explain why. Quantification of the wildfire-related
11 liabilities, as you've already heard this morning, is likely to
12 have a substantial effect on the amount and form of financing
13 necessary to fund a plan.

14 THE COURT: Right.

15 MR. KORNBERG: Because the plan financing ultimately
16 shapes the company's post-reorganization capital structure and,
17 therefore, has a direct impact on rates, the prompt and speedy
18 resolution of the estimation proceedings will facilitate the
19 Commission's essential ratemaking functions. We cannot do that
20 in a vacuum.

21 So as I've described, there's a lot of work we can do
22 to narrow the issues between PG&E and the Commission through
23 the work of Commission's advisory staff. But the essential
24 ratemaking will have to be in the context of understanding the
25 reorganized company's capital structure and the debt and equity

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1 financing that is a part of it.

2 THE COURT: Okay, but what that means to me is that
3 the Commission can't go through the final or whatever processes
4 it goes through until it knows the amount that the company is
5 committing to pay its disputed unliquidated claims, and how
6 it's going to raise the money to pay that. And those are two
7 critical questions. And one question is answered by the
8 estimation process. The other is by the kind of things we
9 heard from the debtor and so on.

10 So if we could have a magic best case/worst case, the
11 sources that are going to provide the funding can tell us
12 whether they can fund it at the lower number or the higher
13 number or anywhere in between. The Commission doesn't need to
14 have the final answer to all those questions, does it, as long
15 as it knows the range.

16 MR. KORNBERG: I'm not sure if a range would work,
17 Your Honor.

18 THE COURT: Okay, the high number.

19 MR. KORNBERG: A high number, I suppose if the company
20 came in with a high number, and the number turned out to be
21 less, and they needed less financing, and there was less impact
22 on ratepayers, I'm sure that would be a good thing, and it
23 would happen.

24 THE COURT: Well, stated differently, if the parties
25 agreed today on an amount to fund the plan for the impaired

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1 victim classes, you still have to go through all these
2 processes. Everything you've described has to happen. The
3 question that I want some more help on is can't a lot of those
4 things take place before that number gets plugged in and how
5 you support or pay that number gets determined?

6 MR. KORNBERG: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. KORNBERG: I think the answer to that question is
9 that a lot of the work will be done in advance, and as I said,
10 we'll start work in the bankruptcy OII after the plan is filed.
11 However, the actual hearings to approve and get a Commission
12 vote will require substantial testimony about -- and evidence,
13 relating to the actual ratemaking. And I think that --

14 THE COURT: Okay.

15 MR. KORNBERG: -- requires a definitive financing plan
16 and capital structure plan.

17 THE COURT: Okay.

18 MR. KORNBERG: So I guess, Your Honor, I would echo
19 what everyone has said this morning, which is the sooner we
20 have the results of the estimation proceeding the better. The
21 Commission's committed to doing its job before the June
22 deadline but, as everyone has noted, this is a fluid situation.
23 And the estimation results or, hopefully, a negotiated
24 settlement are a very, very important condition to getting that
25 work completed.

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1 THE COURT: Okay. I understand, but the point is --
2 well, look at what the debtor filed on the 20th or the 12th.
3 It had a time line. That had a confirmation order on April
4 15th. And the question I have for you is, in your experience,
5 if the OII had been initiated when the debtor filed the plan,
6 same day to Mr. Karotkin's outline -- which is obviously not
7 going to be the outline, but it doesn't mean it can't be an
8 outline of an outline -- would that work? I mean, in your
9 experience, if the debtors were able to follow that time
10 line -- remember the document? Have you seen it? Do you
11 remember it?

12 MR. KORNBERG: Yes, Your Honor.

13 THE COURT: Yeah, it was what they filed on the 20th,
14 and it started with a September 9th filing. And it ended with
15 a confirmation order on April 15th.

16 MR. KORNBERG: Your Honor, I think the issue from our
17 perspective will be as follows: We imagine that the plan that
18 gets filed on September 9th will have to be amended to take
19 into account the results of the estimation proceeding. And so
20 I think the key issue is when will the company be in a position
21 to file that amended plan that has the benefit of the results
22 of the estimation proceeding and the finalization of the
23 financing package.

24 THE COURT: Well, but again, what can the Commission
25 do before that amount is plugged into the blank on the draft?

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1 MR. KORNBERG: The Commission could go about
2 negotiating a global settlement of the myriad --

3 THE COURT: Right.

4 MR. KORNBERG: -- other issues.

5 THE COURT: All those other things.

6 MR. KORNBERG: But the actual vote on the plan --

7 THE COURT: No, I understand the vote.

8 MR. KORNBERG: -- will be at the end of the process.

9 THE COURT: No, how could I -- of course, I understand
10 the commissioners cannot be expected to vote on something that
11 has a blank in it.

12 MR. KORNBERG: Right.

13 THE COURT: My question is -- and I think you're
14 telling me this is doable -- much like my sense of we could --
15 we ought to be able to flesh out some of the bankruptcy
16 challenges to a plan, even though we haven't plugged in the
17 amount that needs to be disclosed as far as the funding for the
18 victims. But you could go -- we could go on a track towards
19 that goal. You even made the comment earlier I think, at the
20 prior hearing, that maybe the bankruptcy court could have this
21 kind of tentative confirmation target. So you're not ruling
22 out that possibility, are you, something like that?

23 MR. KORNBERG: I'm sorry, what kind of --

24 THE COURT: Well, at the prior hearing -- I think at
25 the hearing on exclusivity or maybe it was the last hearing; I

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1 forget which -- but you made the point that maybe the
2 bankruptcy court could provide something in the form of a
3 tentative plan or a plan that would be confirmable. In other
4 words, let me try it this way for you.

5 You heard Mr. Johnston talk about maybe there'll be an
6 impaired equity class. You heard a number of the speakers say
7 we don't know what the plan's going to look like. But come
8 September 9th, there will be a pretty good idea of what the
9 plan looks like in terms of its structure, classification, what
10 have you. I will concede that I can't hope for the amount to
11 go to the trust for the victims -- whether it's Ms. Dumas'
12 forty billion, or Mr. Orsini and Karotkin's ten billion; I
13 don't know what it will be -- and I can't expect the kind of
14 financial interests that are going to step up and capitalize
15 the reorganized company to commit to a blank. But as
16 bankruptcy professionals and judges, we know how to make -- we
17 know the kinds of stuff that have to go into the plan.

18 MR. KORNBERG: Um-hum.

19 THE COURT: You have to flesh out who's going to
20 object, are there other issues that would have to be resolved,
21 even if those numbers are not filled in yet.

22 Are there -- can we have a similar track taking place
23 at the CPUC so that maybe it is at the end of the estimation
24 period. Maybe it's February. Maybe it's January. Maybe
25 it's -- again, using the debtors' outline, the outline said

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1 final order regarding estimation January 17th. Well, what if
2 it's February 17th? Is it still impossible or not impossible
3 to assume the Commission can follow a similar track?

4 MR. KORNBERG: It's not impossible. And let me be
5 very clear, because I apparently haven't been.

6 THE COURT: No.

7 MR. KORNBERG: There are many, many issues that will
8 be addressed in the settlement discussions between advisory
9 staff and PG&E. And we're going to start working on those
10 immediately. And as I listed them, these are significant,
11 important matters that require resolution.

12 THE COURT: Right. No, I understand that.

13 MR. KORNBERG: What we will not be able to do -- and
14 if this is what Your Honor is getting to -- we will not be
15 giving preliminary rulings or conclusions in advance because
16 that has to await the adjudicative process before the
17 Commission. But that doesn't mean that we won't be addressing
18 all of these very significant issues starting as soon as the
19 bankruptcy OII is launched.

20 THE COURT: Okay. No, that's all I could hope for. I
21 mean, it sounds like a very tight schedule and a difficult
22 path -- two paths. I mean, it's a -- I don't want -- no more
23 metaphors, whether it's Cal-L (ph.) or not. The Commission has
24 to do its thing. The bankruptcy court has to do its thing.
25 And at the moment, it sounds like nobody is saying it can't be

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1 done. It's just a challenge, right?

2 MR. KORNBERG: Exactly.

3 THE COURT: Stating the obvious.

4 MR. KORNBERG: We will get it done. We hope it won't
5 become more complicated, however, than it already is.

6 THE COURT: Well, I'm sure you or your colleagues will
7 be at the table with the other players on the bankruptcy side;
8 whether you invite them to the CPUC is none of my business.
9 But you or someone from your side has to be participant in this
10 discussion to make it work. Okay, I'm okay with it. I got it.

11 MR. KORNBERG: Thank you, Your Honor.

12 THE COURT: Does anyone else want to be heard on this
13 topic? Whether we take a break or try to conclude the other
14 matters, I don't know, but let's see. Anybody want to talk
15 about the -- what we'll call the plan-disclosure-statement
16 track and the CPUC interplay? Okay.

17 So I had suggested as a separate matter to deal with
18 the inverse condemnation issue. And I offered a proposed time
19 line. I think the ad hoc committee proposed a slight
20 adjustment to that.

21 I need to make this statement. In the prior
22 discussions we had during the estimation -- the original
23 estimation hearing, I might have misunderstood. I thought the
24 inverse condemnation issue was a simple yes or no. I mean, it
25 either is or isn't a viable doctrine. And although it might be

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1 a simple question to state, it's certainly a question that
2 needs to be fully vetted.

3 But in reading the papers, I believe from Mr.
4 Orsini -- your letter, it looks like there's some maybe not
5 factual disputes, but facts that drive the outcome, right. So
6 you made the point about some of the lines that are dedicated
7 for public work versus private work. How do I resolve that as
8 part of the step?

9 MR. ORSINI: So two separate issues, Your Honor.

10 THE COURT: Yeah, okay.

11 MR. ORSINI: So from our perspective -- and before I
12 do that, I just want to clarify one thing on the record --

13 THE COURT: Okay.

14 MR. ORSINI: -- because it's very significant and
15 needs to be clarified. Ms. Dumas was suggesting, and Your
16 Honor just picked up on the idea that the spread between the
17 parties on the value of the individual claims is ten to forty.
18 She said take Mr. Orsini's ten. Mr. Orsini doesn't have a ten.
19 Our position that the value of their claims are significantly
20 below that number. I just need that to be clear on the record.

21 THE COURT: Okay.

22 MR. ORSINI: With respect to inverse condemnation, so,
23 Your Honor, the issue that we have proposed to brief in an
24 earlier phase of the case, you are absolutely right, is a
25 yes/no, up/down question. And the question is as follows: is

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1 inverse condemnation as a doctrine under California state law
2 applicable to an investor-owned utility such as PG&E.

3 THE COURT: Right, that's how I understood the
4 question.

5 MR. ORSINI: And if it is, is it unconstitutional
6 under the federal Constitution? That is a simple up/down
7 question. Doesn't require facts.

8 THE COURT: Well --

9 MR. ORSINI: It's something that can be dealt with --

10 THE COURT: -- can the bankruptcy court or even a
11 district court make -- even rule on it, versus is there a
12 controlling precedent that we cannot?

13 MR. ORSINI: Well, that's on the merits, right.

14 THE COURT: But that's still a legal question.

15 MR. ORSINI: Exactly, Your Honor.

16 THE COURT: Okay.

17 MR. ORSINI: Exactly, Your Honor. I think what you're
18 referring to in my letter with respect to some fact issues is
19 let's assume for a second that Your Honor disappoints me, and
20 you rule against me on whether or not inverse condemnation
21 applies to PG&E. Okay? At that point, so we've lost our
22 threshold challenge as to whether it even applies to the
23 debtors. Then there will still be, at least for some fires, a
24 factual question as to whether or not inverse condemnation
25 applies to that fire.

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1 THE COURT: But is it a factual question or is it just
2 a question that the facts are not in dispute; we just have to
3 apply the rules?

4 MR. ORSINI: Well, actually, that's a fair
5 clarification. I think ultimately, Your Honor, on this
6 question, it's going to be something that could be resolved on
7 something akin to summary judgment.

8 THE COURT: Well, that's -- see that's --

9 MR. ORSINI: Because the underlying --

10 THE COURT: -- that's what I was -- go on.

11 MR. ORSINI: Let me just -- if I can just explain the
12 argument.

13 THE COURT: Yeah, go ahead.

14 MR. ORSINI: Just very briefly, the argument is based
15 upon a doctrine under California law known as Cantu. Very
16 simply stated --

17 THE COURT: Yeah.

18 MR. ORSINI: -- inverse is about damage caused by
19 something built for the public good.

20 THE COURT: No, I got that.

21 MR. ORSINI: And in Cantu, the argument was -- that
22 was adopted by the intermediate court in California where a
23 line had been extended for a handful of people. That was a
24 private good, not a public good. So for some of the fires at
25 issue, particularly in 2017, there will be this question as to

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1 given the circumstances under which a particular line where a
2 fire may have started was constructed, does that fall into the
3 Cantu doctrine or not.

4 The facts as to how many people were served, when it
5 was built, why it was built, those I think will all be
6 undisputed. But that is sort of what we propose to deal with
7 in the second phase, because it still does require some
8 discovery and assessment of facts.

9 THE COURT: Well, you're saying -- well, are you sure?
10 I mean, I guess my gut -- what I was getting at as I thought
11 about a briefing schedule, it was -- and whether it was my
12 dates or your dates are not a big deal, but it was the point
13 that you made in your letter that, well, there are some facts
14 that will drive the outcome in part. You said it before I did.
15 It sounds like a perfect example of a summary judgment or
16 partial summary judgment.

17 MR. ORSINI: We would be --

18 THE COURT: But it depends on if your opponents
19 disagree with the underlying facts as to a particular fire at a
20 particular location. I mean, excuse me -- whether it was
21 private or public use.

22 MR. ORSINI: To the extent my friends on the other
23 side would agree that it's something the Court could resolve on
24 summary judgment -- effectively summary judgment on the papers,
25 we'd be happy to fold that issue into our threshold legal

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1 challenge as to whether or not inverse applies to investor-
2 owned utility.

3 I suspect they're not going to agree with me on that,
4 in which case, we're back to what we are proposing, which is
5 let's take the piece we know the Court can deal with quickly
6 and that is a pure legal issue, which is that threshold
7 challenge. Let's get that briefed sooner rather than later.
8 And then to the extent we need to deal with these factual
9 issues, we can deal with them as we get into the meat of the
10 estimation process going forward.

11 With respect to the briefing schedule, Your Honor, we
12 continue to believe we can and should brief inverse earlier,
13 but I think we've got a lot bigger fish to fry than to argue
14 about that briefing schedule. I do think that there was some
15 suggestion by some of the objectors that they wanted a little
16 bit more time.

17 THE COURT: Just another week I think, yeah.

18 MR. ORSINI: Yeah, which what I would propose, Your
19 Honor, is I'm happy to give them another week. But let's not
20 use that to delay the ultimate resolution. Have my motion go
21 in a week sooner. So it's still coming in after the bar date.
22 It still gives the same adequate time that Your Honor had
23 identified after the bar date for the opposition, but it gives
24 the parties who are all already in this courtroom already
25 thinking about those issues that extra week they've asked for

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1 rather than shift everything back.

2 THE COURT: So debtor motion -- okay, I had suggested
3 that you file on November 1. You're suggesting an earlier
4 date?

5 MR. ORSINI: I'm suggesting if they really do want
6 their extra week for the opposition --

7 THE COURT: Well --

8 MR. ORSINI: -- just back me up a week. Keep the rest
9 of the schedule the same.

10 THE COURT: -- so what's -- so for you, that would be
11 October 25th?

12 MR. ORSINI: Yes, Your Honor.

13 THE COURT: And then your proposal would be the
14 opponents, whether it be TCC or anyone else -- I had suggested
15 November 15th.

16 MR. ORSINI: My proposal is that date sticks. Your
17 Honor had -- I think as Your Honor suggested by setting that
18 schedule, it's more than enough time after the bar date. And
19 by moving my brief up, you give them the extra week they're
20 asking for.

21 THE COURT: Okay, I'll hear the others speak about
22 that. My recommendation to the district court, as you will
23 recall, was that this was a matter that I did not believe was
24 implicated by the issue. My recommendation was adopted by the
25 court, and so I'm -- and no one has raised a contrary view, so

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1 I'm going to suggest that that be the process. And I'll let
2 the TCC or other plaintiffs' lawyers respond to that.

3 MR. ORSINI: Thank you, Your Honor.

4 THE COURT: Any response? Is that -- Mr. McCallen,
5 are you going to come on up? That's -- I recognized you;
6 didn't I?

7 MR. MCCALLEN: Good morning, Your Honor. Good to see
8 you again. Just briefly, I'll just deal first with just the
9 logistics on the scheduling. We're fine with the amendment to
10 the schedule proposed by Mr. Orsini, in other words, moving the
11 date forward by one week rather than moving our opposition date
12 back. So I think that's the most critical issue in terms of
13 just setting forth the schedule. And that's that.

14 I would like to introduce, though, another counsel
15 for -- Craig Simon, who's lead counsel in the North Bay fire
16 litigation.

17 THE COURT: Okay.

18 MR. MCCALLEN: He just wants to address some of the
19 issues that Mr. Orsini addressed earlier about Cantu and some
20 of his statements he made about the factual issues.

21 THE COURT: Okay. I'll be happy to hear what Mr.
22 Simon has to say, but I'm not going to resolve it today,
23 unless --

24 MR. MCCALLEN: Understood, Your Honor.

25 THE COURT: -- we proceed.

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1 So all right, Mr. Simon, good morning.

2 MR. SIMON: Thank you, Your Honor. Craig Simon, one
3 of the lead counsel in the state court action. And Mr.
4 Orsini's comment about Cantu and the inverse condemnation is
5 not exactly accurate and not exactly clear.

6 The one thing I wanted to point out to you is it's not
7 a clear up-and-down summary judgment motion without a fact on
8 the issue of whether a privately owned public utility is
9 subject to inverse condemnation.

10 The arguments that come from those, and I just argued
11 this yesterday in front of Judge Buckley in the Thomas fire
12 down in Southern California. And the issues that come up in
13 these cases, the defense says we can't risk spread unless we
14 get the permission to do so. And unless we have permission to
15 risk spread in the future known now, we are different as a
16 privately owned utility from a public utility.

17 And we have factual issues that go to the issue of
18 risk spreading. It has to do with whether or not, for example,
19 when a utility seeks a certain -- an increased level of
20 investor return, whether that acts as cost-shifting. And
21 there'll be some discovery on that. So I just wanted to set
22 the record clear that in the very "up-or-down" issue, there are
23 facts embedded in that.

24 THE COURT: Well, how do you -- then you don't like
25 this time schedule, do you? I mean, how do I deal with this?

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1 What facts? I mean, I thought this was going to be easy. It's
2 not easy. What do you need to do by way of getting discovery?

3 MR. SIMON: Probably a deposition of one of their
4 people with regard to rate issues, and if that needs to be
5 disclosed or discussed on our side, we have people who will be
6 prepared to discuss those issues as well.

7 THE COURT: Well, one thing that will not be helpful
8 to me, at least, to try to do this is to get equivalent of a
9 motion for summary judgment with an opposition saying there are
10 material facts in dispute, in which case, I have no choice but
11 to deny it, assuming -- and I'm assuming that even if there
12 were facts to dispute, that's not something that I couldn't
13 decide. The question is how about doing it. I'm not going to
14 be able to have a mini trial on this issue. So, Mr. Simon,
15 could you envision that this matter could be done in this kind
16 of a procedural setting?

17 MR. SIMON: It depends on what the motion is, Your
18 Honor. Obviously, I've seen motions brought like this before
19 from other privately owned utilities. And they do embed a
20 certain fact issue that comes in. If they are doing something
21 purely of law that we would be able to respond to purely of
22 law, then obviously --

23 THE COURT: Well, sure.

24 MR. SIMON: -- we can do it.

25 THE COURT: Of course.

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1 MR. SIMON: So I think -- I think we need to see the
2 motion, and then address it at that point.

3 Also, Your Honor, with regard to Cantu that was
4 mentioned, Cantu was a trench that PG&E built for a number of
5 homes, and the trench delivered water to a land -- caused a
6 landslide. Had nothing to do with counting poles or counting
7 customers in the same way that Mr. Orsini said. So we're going
8 to be factually discussing Cantu in light of the various fires.

9 But I guess the question that I would ask Mr. Orsini
10 or anyone on his side is which fires specifically are they
11 bringing any inverse motions regarding?

12 THE COURT: I think he's -- didn't he identify the
13 fires in his letter? Did you read his letter?

14 MR. SIMON: Yes, I did.

15 THE COURT: Those are -- aren't those the fires --

16 MR. SIMON: But --

17 THE COURT: -- Mr. Orsini? That you listed about ten
18 fires. Aren't they the ones?

19 MR. ORSINI: Those are the ones I'm aware of as I sit
20 here right now, Your Honor.

21 THE COURT: So for all the other fires, it's the pure
22 legal question.

23 MR. ORSINI: That's correct, Your Honor.

24 THE COURT: Right?

25 So, Mr. Simon, is that --

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1 MR. SIMON: Yes, thank you, Your Honor. So in those
2 fires, there will be factual issues with regard to, for
3 example, any Cantu-type motion brought, whether or not it's on
4 public use or private use.

5 THE COURT: I have to simplify this because, for
6 reasons that many of you are quite familiar with, so I'm not
7 going to repeat it, we're splitting this estimation process
8 into various parts: part of it down the street, part of it up
9 on the 19th floor, part of it here. And the argument on
10 inverse condemnation, until a couple of days ago, was a pure
11 legal question. And that seemed like an easy thing to fit into
12 this schedule. If suddenly it becomes a factual question, then
13 the question is well, how can it possibly work. I mean, I
14 certainly can do my best to consider the law and apply it, but
15 if there are facts in dispute, and I have no choice but to deny
16 the motion, then everybody's lost all the effort to try to get
17 this piece out of it. So whether I go up or down, whether I
18 rule for or against the debtor, it's a component to the
19 estimation equation or formula. But it's no contribution to
20 the problem if the answer is motion denied because of facts in
21 dispute.

22 MR. SIMON: Your Honor, the way --

23 THE COURT: So what do I do?

24 MR. SIMON: Again, I'll only throw out one situation.

25 Judge Buckley --

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1 THE COURT: Yeah.

2 MR. SIMON: -- in complex --

3 THE COURT: That's what you said.

4 MR. SIMON: -- in Los Angeles Superior Court,
5 Department 10, the way he handled it with Edison is he asked
6 Edison to file their brief. Then he asked the plaintiffs in
7 that case to respond whether they thought there were factual
8 issues --

9 THE COURT: Right.

10 MR. SIMON: -- or whether they thought they could do
11 it legally.

12 THE COURT: Okay.

13 MR. SIMON: And then he had a hearing on that issue.

14 THE COURT: Okay.

15 MR. SIMON: So to me, I think that's the way --

16 THE COURT: Did he rule?

17 MR. SIMON: -- to get it. Yeah, he ruled yesterday
18 that he thought there were factual issues.

19 THE COURT: So he --

20 MR. SIMON: In that particular case.

21 THE COURT: Great.

22 MR. SIMON: Yeah.

23 THE COURT: I'll just adopt the decision of the
24 Supreme Court.

25 MR. SIMON: I'll send you the ruling, Your Honor.

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1 THE COURT: No, I don't want the ruling.

2 MR. SIMON: I'm teasing. But my point was that I
3 believe that we need to see what the motion is.

4 THE COURT: Mr. Orsini, you don't have to get up. Are
5 you -- is this motion for summary judgment doomed to be denied
6 for this reason? I mean, can you figure out a way to get
7 around it so we can do this efficiently?

8 MR. ORSINI: Your Honor, I fundamentally do not
9 believe that there are any fact issues that will be in dispute
10 or relevant to the motion that we proposed to file and the
11 schedule we just described. We've done this twice in the state
12 court. I was disappointed with the outcome of those, but I'm
13 hoping third time's a charm.

14 THE COURT: Going for the hat trick.

15 MR. ORSINI: They were done on the state law
16 equivalent of a motion to dismiss. There were not disputed
17 fact issues that precluded the resolution of these arguments.
18 There's a single fact that matters here, Your Honor. That
19 single fact -- and I'm not asking you to agree with me right
20 now because we're not arguing the merits, but there's one fact
21 that matters that's not going to be disputed.

22 Mr. Kornberg's client holds the purse strings.
23 They're the ones who are able to decide whether or not we raise
24 rates in order to cover losses associated with wildfires. And
25 our argument is very simply that fact distinguishes us from

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1 public utilities. And when you apply the law of the Supreme
2 Court of California, including as it confirmed in its most
3 recent decision on inverse about a week and a half ago, that
4 means it can't apply to PG&E.

5 But look, I have no doubt that they're going to make
6 some argument that there's a disputed fact in there. They
7 don't want the issue decided quickly.

8 THE COURT: Mr. Simon, how much did -- Mr. Simon, what
9 was Judge Buckley's page requirement? How long were the
10 motions? How many pages?

11 MR. SIMON: I believe that they filed it in twenty
12 pages.

13 THE COURT: Okay.

14 MR. SIMON: And we did it in less than ten.

15 THE COURT: Mr. Orsini, I'll let --

16 MR. ORSINI: I'll take it, Your Honor.

17 THE COURT: I'll let you file your motion. We'll call
18 it a motion for summary judgment. It's in the context the
19 estimation and the process called claims estimation is a
20 little -- in bankruptcy terminology, as many of you know, it's
21 called a contested matter. Contested matters do lend
22 themselves to summary judgment or a partial summary judgment
23 motion.

24 You file your motion and support it. We'll stick with
25 the normal rules for our court. So it's twenty-five pages.

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1 And if you have facts -- you can make your argument without the
2 facts -- I mean, without any facts in dispute, so be it. If
3 your opponent raises facts in dispute, we'll deal with it that
4 way.

5 Mr. Julian, do you want to be heard, because you're
6 going to -- one of you will -- one of the people on your side
7 is going to be responding on this argument, so either you work
8 that out --

9 MR. JULIAN: I'm going to bring it back to your August
10 20 order. It sets a briefing schedule on a pure legal issue
11 that does not deal with this Cantu stuff. The pure legal issue
12 that you ordered briefing on, which is fine as modified today,
13 is whether the bankruptcy court can determine that the
14 California Supreme Court would overrule the California Court of
15 Appeal decisions on whether inverse condemnation applies to
16 investor-owned utilities. That's the only thing we're
17 briefing, Your Honor, and Mr. Orsini, I believe, agrees it's a
18 legal issue. His brief is going to be due October 22.

19 THE COURT: 25.

20 MR. JULIAN: Ours is --

21 THE COURT: I thought we said 25. Didn't we say 25?

22 UNIDENTIFIED SPEAKER: Yes, 25.

23 THE COURT: 25.

24 MR. ORSINI: 25th.

25 MR. JULIAN: Oh, 25th?

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1 THE COURT: Yeah, 25.

2 MR. JULIAN: Our brief is due November 15 and their
3 reply brief --

4 THE COURT: Yeah.

5 MR. JULIAN: -- due thereafter as set forth. It
6 doesn't have to do with this Cantu issue.

7 THE COURT: Well, I don't know if it does or doesn't.
8 Again, I don't know the law. But we'll stick with that
9 schedule, and if there are facts in dispute that make me deny
10 the motion, I'll deny the motion if I have to --

11 MR. JULIAN: Thank you, Your Honor.

12 THE COURT: -- and without getting into the merits.
13 Okay, we'll put that to bed.

14 Let me see if it's -- well, we're here to talk
15 about --

16 MR. MARSHACK: Excuse me, Your Honor.

17 THE COURT: Yeah. Yes. Yes, Mr. Marshack.

18 MR. MARSHACK: You -- just to be clear, I believe your
19 order provided that Mr. Orsini will file his brief, and then
20 TCC will file their brief.

21 THE COURT: Mr. Julian has to coordinate with other
22 counsel. You and Mr. Tredinnick for the City wants to weigh
23 in, and any other group, you just have to coordinate, so I get
24 one brief.

25 MR. MARSHACK: That is exactly my point. So subro,

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1 us, and TCC.

2 THE COURT: Well, it's anybody who wants to oppose it.
3 I mean, it's a -- you're all experienced capable lawyers; you
4 can do it that way.

5 MR. MARSHACK: And are we --

6 THE COURT: But the CCSF, through Mr. Tredinnick. I
7 don't even know if -- seen him or if he's here. I mean --

8 MR. MARSHACK: And we're held to the page limit,
9 correct? And --

10 THE COURT: I'm going to modify the page limit, if
11 necessary. I just want to get to the issue. Okay.

12 So, Mr. Julian, are you or whoever works with you on
13 this subject -- I'll ask you to coordinate with other counsel,
14 so that there can be a joinder on the brief.

15 MR. JULIAN: Yes, Your Honor.

16 THE COURT: Okay. I did ask for comments and
17 discussions from many of the litigation counsel.

18 If Mr. Pitre or Mr. Kelly are here particularly, I
19 don't -- Mr. Pitre, can you help me on this? You were partly
20 persuasive to get me to grant the relief you asked for. Now
21 tell me how to make it work.

22 So the first question is, have you filed anything with
23 the superior court yet?

24 MR. PITRE: Yes, Your Honor.

25 THE COURT: Okay.

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1 MR. PITRE: And I'm pleased to report that Ms. Cordova
2 yesterday went down to the San Francisco superior court. With
3 cooperation of PG&E, there was a stipulation that the hearing
4 that we asked for on preference, will be set for September
5 16th --

6 THE COURT: Oh, okay.

7 MR. PITRE: -- in conjunction with a C&C in front of
8 Judge Jackson. So that has been taken care of, Your Honor.

9 THE COURT: One of the questions that I thought about
10 after I went home and made my decision, and thought about what
11 comes next, including drafting this order for today, was what
12 if your side gets cold feet and decides not to stick with the
13 preference? I mean, I presume a preference plaintiff can waive
14 the entitlement, but I got to make sure that that doesn't
15 happen. I mean, obviously if there were personal reasons why
16 you or any of the principal lawyers need to get some
17 adjustments, that's a different story.

18 I would not be favorably impressed if you persuaded me
19 to let this go for reasons that you said, only to have it
20 sidetracked. So what can you do to assure me that that's not
21 going to happen?

22 MR. PITRE: What I can say is that all the lawyers on
23 the personal injury side have red-hot feet. There is no cold
24 feet. We want that case to go forward. It's statutorily
25 mandated.

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1 THE COURT: Yeah, but it's only --

2 MR. PITRE: And you --

3 THE COURT: -- statutorily mandated if the person who
4 claims it, claims it, right? Because --

5 MR. PITRE: Nobody is going to ask for an extension,
6 and the only issue, Judge -- it's very simple. Will PG&E
7 cooperate with the discovery that is necessary to have that
8 case tried? And my suggestion, if I have an opportunity to
9 speak to the superior court judge, is that if there is a delay,
10 that there be a finding and a sanction and an evidentiary
11 sanction, but that case will not be continued.

12 THE COURT: Well, I don't want to get into the subject
13 of -- I don't like sanctioning lawyers, and particularly
14 telling other courts to do it. My point is that Mr. Orsini and
15 Mr. Karotkin and everybody on the debtor's side know that the
16 way they can get in trouble with me is to hold up something
17 because the way to pay the price is to slow it down here.

18 In other words, they've been pushing for the
19 estimation to go forward. I'm perhaps lesser involved in that
20 than at the last hearing, but that's not the point. And I
21 don't speak for Judge Donato, he will decide for himself what
22 he wants to do. But my guess is he will get the message loud
23 and clear, as the entire populace of northern California has,
24 about the urgency of making all these things come together.

25 So I'll take your word for it that that's going to

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1 happen. The question then -- the second question is, I think,
2 you were the one that said -- or maybe it was Mr. Kelly, I
3 forget -- about why don't I pick up the phone and call the
4 superior court judge. And I'm not inclined to do that, but
5 what can or should I do, if anything, and if you say do
6 nothing, that's fine, I'll take it. Any words of wisdom on
7 that subject?

8 MR. PITRE: Well, Your Honor, I don't think there is
9 anything different than Mr. Kelly had offered to the Court,
10 which is, from time to time, if appropriate, walking across the
11 street, and sitting in conjunction with Judge Jackson at a case
12 management conference, suggestion only. Two, regular status
13 reports by Mr. Kelly or I to this Court as to what is going on,
14 so this Court knows exactly what is happening. You also have
15 Mr. Orsini who can report, so the Court is kept abreast.

16 If the telephone doesn't work, sometimes what has been
17 done by Judge Breyer and also by Judge Walker in the past, is
18 to have a telephonic conference, where the judge phones in and
19 listens to what's going on, so that the Court can be apprised
20 of exactly what's happened. Those are the only suggestions I
21 have.

22 THE COURT: Yeah, well, I, of course, feel strongly
23 and appreciate those two judges, but we just have different
24 styles. And I don't particularly enjoy or feel comfortable
25 interfering with another judge's court, whether it be federal

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1 or down the street at superior court. So I'm not going to do
2 that unless there's a reason. But the notion of getting up to
3 date, as you know, we have enough ongoing regular hearings
4 here, status conference, motions, and I don't mind getting a
5 status report from Mr. Orsini or Mr. Karotkin, or your side.
6 Mr. Julian's not bashful either. He knows how to tell me what
7 I need to know, so --

8 MR. PITRE: Yeah, the first status conference would be
9 September 16th, and I will be pleased to provide a report as to
10 what happened, as well as Mr. Orsini or anybody else.

11 THE COURT: Well, is it your view that the judge at
12 that hearing will set the trial, or assign it out to the trial
13 judge --

14 MR. PITRE: That is my expectation, Your Honor.

15 THE COURT: Okay. Okay, well, that's -- then that's
16 fine. You had made this point before about contacting the
17 judge, and the flip side is true. I mean, if a superior court
18 judge on a matter wants to communicate with this court, again,
19 that's fine. It gets more complicated when we have yet another
20 federal court involved, because the critical thing is the
21 resolution of the estimation procedure and -- proceeding, and
22 how that goes about remains to be seen.

23 Okay, I'm --

24 MR. PITRE: Yes, Your Honor.

25 THE COURT: -- happy with that explanation. Thank you

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1 for coming --

2 MR. PITRE: Very well.

3 THE COURT: -- and telling me.

4 MR. PITRE: Thank you, Your Honor.

5 THE COURT: All right, let's have --

6 MR. KORNBERG: May I just comment briefly --

7 THE COURT: Yes, sir.

8 MR. KORNBERG: -- on this issue? So I obviously read
9 your decision on the lift stay very carefully, and in
10 particular, footnote 4, which I read as the Mr. Orsini
11 cooperative footnote. So just to update the Court, as Mr.
12 Pitre said, there was -- there were two ex parte hearings
13 yesterday.

14 Effectively what happened is, the parties agreed to
15 shorten the time for the briefing on whether or not they're
16 entitled to statutory preference and also the briefing on where
17 the trial actually should be held. Your Honor may recall, our
18 position is that it should be held in Sonoma, the county that
19 was actually affected by the fire. Their position is, it
20 should be held in San Francisco. We don't want that to delay
21 things. So that too will be taken up at the September 16th
22 conference.

23 In terms of --

24 THE COURT: But is it -- is your experience that the
25 conference will be definitive on the motions?

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1 MR. KORNBERG: I would --

2 THE COURT: The judge will be asked to rule on the
3 motions.

4 MR. KORNBERG: I would expect so, Your Honor.

5 THE COURT: Whether she does or --

6 MR. KORNBERG: I never liked to, particularly on the
7 record in another court, presume to say what a different
8 court's going to do, but I think the court understands below
9 the significance of the timing here. Certainly we had very
10 good experiences with Judge Karnow, the pervious judge, who was
11 overseeing these litigations to make quick decisions on these
12 types of issues, so I agree with Mr. Pitre. I would expect
13 that we'll know up/down on both of those issues come the 16th.

14 And just so the Court understands, what that means if
15 I count my days right, is the latest the trial could be set to
16 begin is January 14th.

17 THE COURT: But what about earlier?

18 MR. KORNBERG: It could be set earlier.

19 THE COURT: But could you be persuaded to cooperate in
20 making it earlier if the plaintiffs want to do that?

21 MR. KORNBERG: I am willing to cooperate to set it as
22 early as the plaintiffs are willing to. Of course, there's the
23 question of what discovery needs to be taken --

24 THE COURT: Right.

25 MR. KORNBERG: -- and the physics of how quickly that

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1 can be taken.

2 THE COURT: No, I understand that. Understand that.

3 MR. KORNBERG: Okay. The only other point, Your
4 Honor, on the question of communication and I've heard you loud
5 and clear as to what Your Honor's preferences are on that
6 front. The one area where I think there could be some utility
7 in the Court communicating its views, is on what is most
8 important to this Court in terms of the outcome of that trial.

9 And by that, I mean, when we were here roughly a week
10 and a half ago, there was a discussion about how long the trial
11 would last. There was the discussion about -- and the
12 suggestion by the tort claimants, that potentially we could
13 bifurcate the trial, so that we deal with the issue of
14 causation, get the verdict on that, so you could plug it into
15 the estimation process. That obviously would shorten the
16 trial.

17 It may also allow us to get to that stage a little
18 faster, because we don't have to go through the full-blown
19 discovery on damages. We had proposed that stipulation to the
20 trial lawyers, that we engage in the bifurcation, and in
21 return, that we wouldn't even object to preferential trial
22 setting. They've not been willing to agree to that, and
23 instead have said that we need to work into the initial
24 session, if we are bifurcating, some testimony from their
25 clients on their specific damages.

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1 That obviously complicates matters. It's going to
2 delay issues. I don't think it gets to the sixty-four-million-
3 dollar question, as Your Honor said, which is what really
4 should be tried first, which is what caused the Tubbs fire.
5 Was it PG&E, and it was PG&E, was PG&E negligent? So I think
6 Your Honor's views on that will be useful.

7 THE COURT: Well, I mean, we raised them before. That
8 was the original proposal from your side, that I decide that
9 before we ever even got to the Article III issue. And had I
10 denied the motion for relief from stay, maybe I would've taken
11 you up on it, but to me, it was once I was persuaded to grant
12 relief from stay, that that problem switches venue.

13 MR. KORNBERG: It's someone else's --

14 THE COURT: Yeah, and --

15 MR. KORNBERG: Okay.

16 THE COURT: -- and similarly, the decision of
17 involving the Article III judge is so critical now too, so I
18 may have virtually no role in some of these things going
19 forward. That's something that you all, principal lawyers,
20 need to be prepared to discuss with Judge Donato the sooner the
21 better, and maybe by now, he's issued his order. I don't know.
22 I can't -- don't make it a habit of telling him what to do
23 either. But he does know that -- he informed me that he will
24 be doing a status conference shortly. So I encourage you to
25 discuss with him the timing of the estimation process, and

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1 what's going on in the superior court as well, so.

2 MR. KORNBERG: And would that include Your Honor -- I
3 just want to make sure I have a clear understanding as to what
4 we're covering today versus at that conference. Is Your
5 Honor's anticipation that we would be covering with Judge
6 Donato the question of not only when the estimation will occur,
7 but what it looks like, whether it's our proposal or --

8 THE COURT: I think so. I mean, I think -- look, I
9 mean, one of the things that's so awkward about this, is
10 there's not a playbook on how to do this, and so then -- and
11 for reasons I've tried to explain in my recommendation for a
12 withdrawal that the court accepted, is that I didn't wish to
13 take on the responsibility of making the call on such things as
14 I deferred on emotional distress as part of personal injury or
15 not, was that the trier of fact has to make that call. It's
16 the same with the burden of proof question in this.

17 MR. KORNBERG: Right.

18 THE COURT: And the same with who goes forward. The
19 same with how to conduct it. Is it an evidentiary hearing? I
20 mean, is it a -- which side goes first. Is it -- how can the
21 trial judge not be in charge of that process? So --

22 MR. KORNBERG: And to be clear, Your Honor, we don't
23 disagree with that. My experience is if a trial judge is going
24 to preside over a trial, they want to have a voice in what that
25 trial looks like.

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1 THE COURT: That's right. And --

2 MR. KORNBERG: So I just wanted to clarify.

3 THE COURT: And that includes the suggestion that came
4 up in the prior hearing on whether we bifurcate the subrogation
5 claims from the victims' claims, because insurance companies
6 don't suffer personal injury or emotional distress, but that
7 doesn't mean that there isn't one fire and one set of facts.

8 MR. KORNBERG: Understood.

9 THE COURT: So I think Judge Donato's going to make
10 the call on that, and he'll take all the advice you can give
11 him, I think.

12 MR. KORNBERG: Thank you, Your Honor.

13 THE COURT: Okay, so on one of the items that I had,
14 I'll defer the question of discovery for a moment. I put on my
15 list, role of the Article III judge. I've just given you the
16 role. I've told Judge Donato a little bit of background. I'm
17 not going to tell him what to do. It's not appropriate for a
18 variety of reasons. And I'm sure he wouldn't listen to me
19 anyway, but he has to make the decisions -- all these critical
20 decisions -- because if he were a -- or I were a ventriloquist,
21 and I had him as a puppet, that would be a strange procedure.
22 That's not the procedure.

23 So I'll take out of order the question of mediation.
24 Some of the people who have filed papers have suggested that
25 there's something to be done. I am not bashful in other cases

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1 to ask parties if they've talked about mediation. Here I don't
2 even want to invite or pin anyone down. I suspect that
3 there -- if there's mediation being considered, you don't need
4 me to tell you to do it. And if it's not being considered,
5 maybe my telling you wouldn't be helpful anyway.

6 But certainly nothing comes out as a big what-about as
7 that, and so I simply leave open either for me, or for Judge
8 Donato, or both of us, or neither of us, to -- for someone to
9 raise the question and tell me how either or both of us can be
10 helpful in the process. And I don't even need a response now,
11 unless somebody wants to respond to me.

12 Mr. Julian?

13 MR. JULIAN: Your Honor, I'd like to address what we
14 had briefed in our estimation brief on core versus noncore, and
15 then address where we are today.

16 So in our August 7th estimation brief, we sent a clear
17 signal that we believed that it would be most expeditious and
18 economical to stay in this court as far as we could on property
19 damage claims, and put off the personal injury to the future,
20 and maybe it would not be necessary. Our intent in saying that
21 was to maximize this Court's adjudication under core
22 jurisdiction.

23 And in the last paragraph -- second to last paragraph
24 of our brief, we stated we preserve the argument or the
25 position on noncore jurisdiction, and we used the word preserve

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1 for a reason, which was that we were not objecting at that time
2 to core proceeding on everything, but we were preserving it,
3 because as we stated on pages, I think, 2 and 15 of the brief,
4 we simply have to have an identification of the legal and
5 factual basis from PG&E, as to why they're denying liability,
6 in order to address scope of the proceeding, discovery, and
7 core versus noncore.

8 And let me address the third point now. That's
9 because when you raise the issue of whether or not the parties
10 would consent to core jurisdiction, we had to go to our eleven-
11 person layman's --

12 THE COURT: Yeah, I don't -- I didn't ask for
13 anybody --

14 MR. JULIAN: No, but --

15 THE COURT: -- to explain why it was done. It was
16 done.

17 MR. JULIAN: We preserve the argument, and I want you
18 to know the position, because we still believe it's better to
19 maximize this court if it can be done.

20 And so when the question was asked of the TCC, can you
21 consent to core, I have to explain to them the legal and
22 factual issues that are going to be subject to core. And at
23 that point, I couldn't do it. So the way I interpret your
24 order, is you are going to issue a -- we are going to have a
25 pre-trial conference, and you're going to essentially manage

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1 this case under case management procedures, and get it up to
2 the pre-trial conference, and then at that time ship it over to
3 the federal court or not.

4 The reason why I raise this is because we -- TCC, and
5 especially me -- view the pre-trial conference as much like a
6 pre-trial conference in the district court, where someone has
7 requested a jury trial. The district -- at the pre-trial
8 conference, the district judge says, are we going for a jury
9 trial or not? Similarly, if you're still of a mind, we would
10 make a decision later of whether or not this case has been pre-
11 tried or narrowed by various rulings, such that it makes sense
12 not to bifurcate proceedings and have everything here.

13 So we still anticipate doing that. That's what I
14 intended to do in our estimation brief, to say we need
15 identification of the issues first, to determine core versus
16 noncore, and consents. If you've already made the decision,
17 though, no matter what --

18 THE COURT: Well, look, the train left the station.

19 MR. JULIAN: Okay, that's fine.

20 THE COURT: I raised the question, and my recollection
21 is, I raised it without anybody even discussing it. And I
22 don't recall anybody offered it as an option, but I raised it
23 on my own, not because I was looking for the work, or because I
24 have a particular outcome in mind, but because it seemed to be
25 most efficient. And so I took it upon myself to ask the

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1 question. Is there consent? And I don't -- I didn't know want
2 to know then, and I still don't want to know why I didn't get
3 consent. I didn't get consent, and I felt no choice but to
4 toss the ball to the district court in the way I did.

5 And the fact of the matter is that the law is
6 unsettled on what does the statute mean for purposes of
7 confirmation versus purposes of distribution. What does the
8 law say about personal injury tort and wrongful death, about
9 emotional distress, and all the things that go with it?

10 MR. JULIAN: I understand.

11 THE COURT: And I was not prepared to take the risk
12 for the victims frankly, or the insurance companies to a lesser
13 degree, of deciding upon myself that I should do that only to
14 be wrong, when it's so easy to have an Article III judge do it.
15 Easy in the sense that I don't get to that question, because of
16 that. So that's why I felt I had no choice. If it -- what
17 does that mean to me? Nothing, it means to me. It means that
18 I have less work to do. But I mean, if all the parties want to
19 persuade Judge Donato to send it back, he can do it.

20 MR. JULIAN: Is your --

21 THE COURT: But I don't really want to discuss that.
22 I'll just do it when I'm asked to do.

23 MR. JULIAN: Is your intent to send the inverse claim,
24 if it stays in the case, which deals only with property damage
25 to Judge Donato along with the other claims?

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1 THE COURT: The inverse condemnation is just a legal
2 question.

3 MR. JULIAN: No, the inverse -- the calculation of
4 damages on the inverse claim. Did you intend to keep the
5 calculation --

6 THE COURT: I haven't even thought about it. I mean,
7 if I --

8 MR. JULIAN: I see.

9 THE COURT: -- I mean, what -- where should it be?
10 You tell me. Suppose I announce that Mr. Orsini is wrong, and
11 the law is what your side says it is. What's the marching
12 order for the estimation judge?

13 MR. JULIAN: As I read your withdrawal of reference
14 order, as I read it, the estimation of damages on the inverse
15 claim is in this court, and the estimation of damages on the
16 negligence combined personal injury would be in front of Judge
17 Donato.

18 THE COURT: I don't think I meant it that way. I
19 mean, I --

20 MR. JULIAN: Oh.

21 THE COURT: I mean --

22 MR. JULIAN: If it's all in front of Judge Donato,
23 then I understand.

24 THE COURT: I mean, to me it makes no sense to
25 bifurcate. It's not efficient. In other words, I didn't think

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1 of it in terms of the inverse claim. I think of it in terms of
2 the property damage claim. So if there had been no personal
3 injuries in this case, or -- by personal injury, I mean all the
4 horrible things that go with it from trauma to emotional
5 distress to death, and this had only been about people's houses
6 or their cars or their trees burning, I don't think we ever
7 would have -- we never would have had a discussion about core
8 and noncore, would we?

9 MR. JULIAN: No.

10 THE COURT: We wouldn't have. That's right. By the
11 way, a little on the side, you probably know this. I learned
12 from Judge Carlson who was involved in some of the drafting of
13 this bill in 1984. The add-on for the district judge came from
14 the asbestos plaintiffs' bar out of nowhere. It wasn't
15 something that was even discussed at the staffing level when
16 they were putting together this whole concept of core and
17 noncore, which I might add began in San Francisco around a
18 table in the bankruptcy court here, the whole concept of core
19 and noncore.

20 And so I asked him a little background, where did this
21 come from? Well, it came from certain groups that wanted to
22 have an Article III judge. So I had no option in my mind to
23 gamble on the rights of the parties, and if lawyers want to
24 persuade Judge Donato to bifurcate it, so that I -- I'm only
25 dealing with personal property and property damage losses, I

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1 guess that's the right thing to do, but it seems the wrong
2 thing to do, because it's one fire, and one set of damages,
3 that caused all kinds of -- well, times twenty-two, maybe
4 there's some that didn't have personal injury components, but
5 that's not the point.

6 So that was the point. I had no -- I didn't feel a
7 choice to do it, so.

8 MR. JULIAN: Thank you, Your Honor.

9 THE COURT: I'll leave it at that.

10 Anybody else want to be heard on any subject?

11 MR. PASCUZZI: Yes, Your Honor.

12 THE COURT: Mr. Pascuzzi?

13 MR. PASCUZZI: Your Honor, I don't know if we're in or
14 at your other concerns part of your order, but I do have one
15 that I raised. Paul Pascuzzi, we're co-counsel with the
16 California Attorney General's Office for the state agencies on
17 our pleading at docket 3421, like CAL FIRE, Office of Emergency
18 Services, Department of Toxic Substances Control, Department of
19 Veteran's Affairs, California State University, and State
20 Parks. Your Honor, I raised the issue before that certain
21 state agency claims are not fire victim claims.

22 THE COURT: Right.

23 MR. PASCUZZI: They are --

24 THE COURT: You did.

25 MR. PASCUZZI: -- cost recovery -- while they could be

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1 called fire related and the motion, debtor's estimation motion,
2 is very broad in talking about fire-related claims, our claims
3 are not property-damage/personal-injury claims. To be clear,
4 there may be a handful of state agencies that have property
5 damage claims, but when we're talking about CAL FIRE,
6 Department of Toxic Substances Control, and the Office of
7 Emergency Services, these are different types of claims. And
8 we don't think they should be part of the estimation procedure.

9 The -- for one reason, if I use CAL FIRE as an
10 example, those claims are liquidated --

11 THE COURT: Well, yeah, you said before, they're
12 liquidated. So they're --

13 MR. PASCUZZI: They're liquidated.

14 THE COURT: -- by definition they're not estimated.

15 MR. PASCUZZI: But we need to be clear, and I need to
16 know that, before we go off into discovery land and into
17 proceedings for the district court, and I think there needs to
18 be some clarity, because recall the debtor's motion or reply
19 said that they dispute our claim, so therefore they're
20 unliquidated and subject to estimation, so.

21 THE COURT: Well, disputing doesn't mean unliquidated.

22 MR. PASCUZZI: I agree with you on that.

23 THE COURT: It means disputed.

24 MR. PASCUZZI: I agree with you, Your Honor.

25 THE COURT: Well, ask Mr. Orsini, do you have -- can

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1 you shed light on this? What's your take on California
2 agencies cost recovery claims?

3 MR. ORSINI: That they are unliquidated and therefore
4 need to be part of the estimation motion.

5 THE COURT: Why are they unliquidated if --

6 MR. ORSINI: Because we --

7 THE COURT: -- they paid -- if they had a certain
8 fixed amount to fix the problem?

9 MR. ORSINI: Well, there's some piece of it that is
10 fixed amount to fix the problem, but the same is true frankly
11 with respect to the subros, paying out whatever they paid out.
12 There's a fundamental question as to whether or not they're
13 entitled to those claims. They're only --

14 THE COURT: That means they're disputed, not
15 unliquidated.

16 MR. ORSINI: No, I understand that, but we would also
17 challenge how much was actually spent. We do not accept that
18 whatever they've spent is --

19 THE COURT: That's disputed.

20 MR. ORSINI: -- is what in --

21 THE COURT: That's not unliquidated. That's disputed.
22 That's what the case law says.

23 MR. ORSINI: Your Honor, I think --

24 THE COURT: You can have any number of disputes. You
25 can say you owe them nothing. But it's liquidated, because the

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1 claimant says, this is what I'm owed to the penny. And if you
2 dispute it, you dispute it. I mean, I think -- isn't that your
3 point?

4 MR. PASCUZZI: Yes, Your Honor.

5 THE COURT: That's what the Ninth Circuit has said on
6 cases. It comes up in Chapter 13 eligibility. It comes up in
7 a number of other questions. I can't remember that it's come
8 up here before.

9 MR. ORSINI: Well, the other point I'll make, Your
10 Honor, is it's the exact same factual issues that are going to
11 have to be dealt with --

12 THE COURT: Well, I understand that.

13 MR. ORSINI: -- and legal issues. And so from our
14 perspective, whether you want to characterize the resolution of
15 those claims as an objection to those claims, in which case,
16 we'd be happy to object to those claims, or as part of the
17 estimation process. What really fundamentally does not make
18 sense --

19 THE COURT: Well, but, Mr. Orsini --

20 MR. ORSINI: -- is to run two separate processes.

21 THE COURT: -- let's think about the -- that sometimes
22 we're stuck with the law, right. So if Mr. Pascuzzi's many
23 clients file proofs of claim, which they will, you have the
24 right to object. So let's just pick one claim. He files one
25 claim for one agency, for \$5,647,256.18, you can deny

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1 liability -- every penny and object to the claim.

2 MR. ORSINI: We can, Your Honor. I think --

3 THE COURT: Now, I'll concede to you that it's maybe
4 not efficient to have a separate trial if that damage claim
5 came from one of the fires that you're litigating, but it's
6 just a liquidated disputed claim. And I don't know what to
7 tell you, except that's the law. It's not unliquidated.

8 Mr. Karotkin, different opinion?

9 And this is important, because it shows up in Chapter
10 13 all the time. We talk about people's eligibility to be in
11 Chapter 13, because of their liquidated -- and it's always
12 getting confused between liquidated and unliquid -- and
13 contingent. But your take?

14 MR. KAROTKIN: I don't think just because he states an
15 amount that he's owed, it's a liquidated claim. He thinks it's
16 liquidated. But it's still a disputed, contingent claim
17 that --

18 THE COURT: It's not contingent.

19 MR. KAROTKIN: -- that has to be --

20 THE COURT: The fire -- you're --

21 MR. KAROTKIN: It's contingent as to our liability.

22 THE COURT: No, Mr. Karotkin. You are confusing three
23 concepts. The Ninth Circuit and the BAP, and I would assume in
24 your part of the world, know the difference between contingent,
25 disputed, and unliquidated. They're three different concepts.

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1 MR. KAROTKIN: Your Honor, that means any fire
2 claimant can come in and say, I'm owed five billion dollars,
3 and that's liquidated --

4 THE COURT: No.

5 MR. KAROTKIN: -- and doesn't have to be estimated.

6 THE COURT: No, no, the Ninth Circuit has told us what
7 that means. It's a sum -- readily ascertainable as a sum
8 certain.

9 MR. KAROTKIN: But it's not.

10 THE COURT: I looked at the claims docket this
11 morning. I was curious as to what the number of the claims
12 are. And I noticed on the claims docket, in Prime Clerk, there
13 is a person who recently filed a claim for 16 -- 160 million,
14 or maybe it's 16 million. And that sounds like an unliquidated
15 claim.

16 But if he's got a claim down to the penny, it can be
17 disputed, but it's liquidated.

18 MR. KAROTKIN: But, Your Honor, in order to get from
19 here to confirmation, if we object to that claim, it has to be
20 either liquidated or estimated.

21 THE COURT: No, it doesn't. It can be objected to.

22 MR. KAROTKIN: And it's objected to, how do we get to
23 confirmation, if it's not resolved?

24 THE COURT: You put -- whatever you don't count his
25 vote, but you anticipate him.

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1 Mr. Pascuzzi, what do you do when you have a claim
2 objected and somebody wants to confirm a plan over you? What
3 do you do?

4 MR. PASCUZZI: Your Honor, there's a temporary
5 allowance.

6 THE COURT: A temporary allowance, you have a
7 temporary allowance or you have a vote, or it doesn't matter if
8 he's outvoted. I mean, there are a number of tools in the
9 toolbox, but you can't reinvent the definition.

10 MR. KAROTKIN: Well, I respectfully --

11 THE COURT: Okay.

12 MR. KAROTKIN: -- disagree.

13 THE COURT: You can disagree. But I mean, the Ninth
14 Circuit has a number of cases on this point.

15 So, I mean, I don't know but, Mr. Pascuzzi, in
16 fairness to the other side, if your various agencies are all
17 over the place with liquidated and unliquidated, and it all
18 starts at a fire at one location, maybe there is a way to be
19 more efficient about this.

20 MR. PASCUZZI: Yes, Your Honor. And the claims
21 haven't been filed yet, so -- but primarily, I'm talking about
22 cost recovery claims of CAL FIRE, which are very detailed to
23 the penny. They're treated like contract claims. They're so
24 liquidated, they're even entitled to pre-judgment interest
25 under state law from the time they demand.

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1 THE COURT: Well, the Ninth Circuit says readily
2 ascertainable, right?

3 MR. PASCUZZI: Exactly.

4 THE COURT: So --

5 MR. PASCUZZI: So the other costs, emergency response
6 costs by the Office of Emergency Services, the Department of
7 Toxic Substances Control will have clean up and environmental
8 remediation types costs, these aren't the types of claims --
9 they're not fire victim claims. Your Honor, there may be --
10 there probably will be some property damage claims for some of
11 the state agencies. And I'm not going to concede, but maybe
12 those will be -- need to be in the estimation process, but I
13 kind of need to know ahead of time, as to our role in this
14 process.

15 THE COURT: Well, look, the only thing I can say is, I
16 believe you and disagree with Mr. Karotkin on this legal
17 principal, but I have to keep an open mind, if there's an error
18 about it.

19 But you don't have to decide today, do you? When the
20 claims deadline comes, that will be fish or cut bait. If you
21 don't file the claims, you got problems. And if you file one
22 claim that's down to the penny and another claim that's all in
23 zeros, maybe you will persuade your opponent to treat them
24 separately. Maybe it will have to be teed up with a real
25 record and a real set of facts, early rather than later. This

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1 sounds like something that's properly in this court --

2 MR. PASCUZZI: Yes.

3 THE COURT: -- not an Article III determination.

4 MR. PASCUZZI: I agree with that, Your Honor.

5 THE COURT: And I believe it would be fair to hear
6 both sides, and then say your claim is not subject to
7 estimation for blah-blah-blah.

8 Look, you know what else is true? If the Tubbs jury
9 comes in and finds that for plaintiff A, either that plaintiff
10 gets zero or gets twenty million dollars, in either case that
11 claim is liquidated, period. But you can still take it into
12 account as part of the estimation, that's all.

13 MR. PASCUZZI: Thank you, Your Honor.

14 THE COURT: All right.

15 MR. PASCUZZI: I believe Mr. Troy from the U.S. DOJ's
16 office is on the phone. He had a similar issue for the United
17 States of America.

18 And then the other thing, Your Honor, I wanted to talk
19 about is the discovery for CAL FIRE, but I'm putting that off.

20 THE COURT: Well, but I'm -- we've gone for three
21 hours --

22 MR. PASCUZZI: Understood.

23 THE COURT: -- with everybody, so I'm going to hear
24 from Mr. Troy, and then I'm going to take a -- probably a long
25 break rather than a short break. I'll see if there's any sense

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1 about whether we should make it a shorter break, but some of us
2 would like a personal break.

3 So, Mr. Troy, do you want to be heard?

4 MR. TROY: Yes, Your Honor, thank you.

5 Matthew Troy, Department of Justice Civil Division on
6 behalf of various federal agencies.

7 Essentially, Your Honor, we agree wholeheartedly with
8 Mr. Pascuzzi's comments. And we have, the federal government,
9 very similar type claims, agree with your comments in response
10 to that in the colloquy with Debtors' counsel.

11 And I think as has been pointed out by Ms. Dumas early
12 at the outset of this hearing, the federal government will have
13 a significant amount of claims in this case that are related to
14 the wildfires but are not truly wildfire claims as the debtor
15 is proposing to address in its estimation motion.

16 As Mr. Pascuzzi said, the United States is not a
17 victim of the federal (sic) fires. In large part, their claims
18 will be for cost recovery of financial assistance and direct
19 assistance provided in response to the wildfires.

20 THE COURT: But, Mr. --

21 MR. TROY: They might have some component --

22 THE COURT: Mr. Troy, they might be unliquidated. In
23 other words, if your -- I take it that you're in the
24 FEMA -- you're covering FEMA, for example, right?

25 MR. TROY: Yes, sir.

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1 THE COURT: Okay. So if FEMA paid out or expended
2 tens of millions of dollars dealing with the fire to do its
3 job, it may be that it hasn't quantified its claim yet. That
4 sounds like an unliquidated claim to me.

5 MR. TROY: I would submit, Your Honor, that in large
6 part they won't be. But the bar -- the proof of claim will be
7 the proof of that.

8 THE COURT: Right. Look, I didn't know -- okay --

9 MR. TROY: And so --

10 THE COURT: -- I got it, proof of claim.

11 MR. TROY: My only point, Your Honor, is, one, to at
12 least some extent, if not a substantial extent, the United
13 States claims will not be subject to an estimation procedure,
14 because in the United States' view, they are liquidated.

15 Secondly, to the extent that Your Honor looks at the
16 proofs of claims and agrees with the debtor to the extent that
17 they are unliquidated and therefore subject to an estimation
18 process, the Government's position is that those claims should
19 not be part of this estimation process that the debtors are
20 proposing on their estimation motion. The United States claims
21 are significantly different in character, both on legal
22 liability theory and the nature of the damage, than what is
23 being addressed principally by the debtors' estimation motion,
24 which is individual tort claimants' damages.

25 THE COURT: Okay. Mr. Troy, thank you.

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1 All right. Here's what I'm going to do. There must
2 be somebody in the courtroom besides the judge and his
3 courtroom deputy that would like to take a personal break. And
4 if not, you can all sit there while we take a break.

5 Mr. Karotkin or Mr. Orsini, on my agenda there's just
6 one item left, but it's a big one. Do you want me to take a
7 fifteen-minute break or an hour-and-fifteen-minute break,
8 because, I mean, I'm not trying to kill people, and we want to
9 get it done.

10 MR. ORSINI: I think from our perspective, fifteen
11 minutes would be preferable, instead of an hour and fifteen
12 minutes.

13 THE COURT: Okay. Because I would think that the
14 conversation is going to be a little shorter than I thought it
15 was going to be based upon what we talked about, based upon the
16 fact that you're going to be seeing Judge Donato here shortly.

17 MR. ORSINI: I think that's right, Your Honor.

18 THE COURT: Okay. Well, I won't take votes on this.
19 I'll take Mr. Orsini's suggestion.

20 I will take a fifteen-minute break for everyone's
21 personal convenience. And I will take up my thoughts on how to
22 deal with this last issue, this estimation liquidation question
23 that two specific counsel mentioned. And then I'll give you my
24 thoughts on something about estimation. And then we'll figure
25 out what to do after that.

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1 So thank you. I'll see you in a few minutes.

2 MR. ORSINI: Thank you, Your Honor.

3 (Recess from 12:33 p.m., until 12:53 p.m.)

4 THE CLERK: All rise.

5 THE COURT: Okay. Please remain seated.

6 So let's take a couple of housekeeping matters.

7 In looking at the calendar again and thinking about
8 Mr. Karotkin's expectation of a filing a plan by the 9th, it
9 makes -- it just wouldn't be time efficient for trying to
10 discuss it the next day. That's just too soon for people to
11 absorb whatever he has to say.

12 Mr. Karotkin, I presume that date is pretty
13 inflexible, if not too much -- I mean, I'm not going to push
14 you to do it earlier. Is there any chance of doing it earlier,
15 or is that just not reasonable?

16 MR. KAROTKIN: It's not reasonable.

17 THE COURT: Okay. No, I take your word for it.

18 So, Ms. Parada, the next calendar we have is the 24th,
19 right? Oh, I'm sorry, we have our dates here.

20 Well, I mean, do you agree with me, all of you
21 principal lawyers? I mean, you don't want to try to talk about
22 what to do about this plan that was filed twelve hours earlier
23 or something like that, right, agree?

24 IN UNISON: We agree.

25 THE COURT: Okay.

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1 MR. KAROTKIN: I completely agree.

2 THE COURT: Yeah. All right. Then I'll put it on the
3 calendar. For lack of a better term, we'll call it status
4 conference on Debtors' plan on September 24th. And I
5 don't -- I won't ask for objections or anything. It will be in
6 the nature of where do we go from here. We'll have some
7 more -- perhaps there'll be more guidance on what's going on,
8 both at the Superior Court and in Judge Donato's court.

9 And by the way, on that subject, I was surprised when
10 I checked during the break that Judge Donato has not yet posted
11 the order that I thought he was going to post it. I just -- I
12 have no comment on that, other than I'm sure it will happen
13 soon.

14 And then on the subject that we just talked about on
15 this estimation versus liquidated/unliquidated, I'm sorry for
16 imposing on lawyers who aren't familiar with it to act like we
17 think we know it here. It's just -- it's a Chapter 13 concept
18 that is ingrained in the system of keeping distinction of
19 unliquidated, disputed, and contingent separate.

20 And so I believe when a fire occurs, that's the
21 contingency. When a claimant states what it's owed, that is
22 the liquidation of the claim. And when an opponent like the
23 debtor objects on whatever ground, that's the basis of the
24 dispute. And the statute allows estimation of unliquidated and
25 contingent claims, not disputed claims.

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1 Now, that being said, it's not fair to the debtors,
2 Debtors' counsel, or anyone else that might believe that this
3 case requires something different. So I believe, as I thought
4 about it during this break, that I'll be open to letting the
5 matter be briefed and dealt with.

6 To those of you who will be discussing scheduling with
7 Judge Donato, I think it's fair to defer to me on that
8 determination of what should be included or excluded from the
9 estimation in that category, because that's a legal issue.
10 That's not at all the same as to whether one estimation process
11 should include the personal injuries suffered by a personal
12 injury victim, emotional distress suffered by that victim or
13 another victim, or property damage to that victim's home or
14 possessions in one fire.

15 It gets more attenuated if -- as I said before, if you
16 have someone who suffered no personal-type injuries or
17 emotional-distress-type injuries, but only property damages,
18 but it's still a fire times twenty-one or twenty-two fires. So
19 I -- consistent with what my thinking is, that would not be
20 efficient to bifurcate it into parts.

21 So I left it with Mr. Julian before the break, if
22 somebody wants to revisit that question, that's for another
23 day; it's not for me to deal with. And I will welcome from the
24 debtor, if it's necessary, a motion to determine what is or
25 isn't appropriate for the estimation process when -- this

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1 notion of liquidated versus disputed.

2 What's left on my agenda for today, but again I don't
3 mean to say that if there's something else that should be
4 brought up, is this question of the discovery. And, once
5 again, what I wrote is what discovery necessary, what is the
6 time frame preparatory to the scheduling of the final
7 estimation. The more I think about it, the second half of that
8 question really belongs with another judge now. But I will
9 give you a thought at least that came to mind, because one of
10 the issues that I think Mr. Orsini on the one hand, and I
11 believe it's the ad hoc committee on the other, perhaps differ
12 on is this notion of burden of proof.

13 I did a little bit of research on this subject, and
14 you'll be guided by the following opening sentence from a
15 decision. This is from a Pennsylvania Bankruptcy Court
16 decision in 2007 called Frascella, In re Frascella. And the
17 court said, "Estimation is at best an imprecise and uncharted
18 process. The Bankruptcy Code and Rules provide no guidance on
19 how to proceed." That's very encouraging.

20 UNIDENTIFIED SPEAKER: Thank you, Your Honor. We have
21 that issue resolved.

22 THE COURT: Very encouraging.

23 And then it goes on to say how the court -- that court
24 likens it to the claims objection process. And that's my
25 thinking too. And I will add the following personal note. The

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1 Frascella court ended by citing as authority for its
2 proposition a case called In re Heath that I wrote for the BAP.
3 So any time another court cites a decision of mine to support
4 its decision, that obviously is a well thoughtful (sic) and on-
5 point decision.

6 But the point is that I believe the proper outcome
7 here for the estimation process is to engage in what would have
8 happened if the claimants had filed their proofs of claim or
9 will file their proofs of claim by the deadline. They would
10 presumably -- if it were a case that was the subject of a prior
11 settlement, the 2015 trial fire where PG&E agreed to pay a
12 fixed amount to someone and just hasn't been paid, that
13 claimant would have not only an undisputed claim, but clearly a
14 liquidated claim. Where we're talking about the vast majority
15 of the claims in this case, where they are unliquidated for the
16 most part and disputed in a generic sense, when PG&E does not
17 admit to liability for any of these fires, that would be fair
18 game in my mind for estimation because of the unliquidated
19 nature, not because of -- a particular claim might be disputed.

20 The fact of the matter is in any mass tort or any case
21 that I'm aware of where there are multiple claims, there is
22 always a fringe number of people whose claims are completely
23 frivolous, and those are the kind of claims that can be dealt
24 with in the estimation or the objection -- excuse me, the
25 objection process. For here, we have a vast number of claims

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1 that are not frivolous, but the debtors may question and
2 dispute the liability. But, certainly, if the liability's
3 established, then it's perfectly okay to estimate the
4 unliquidated amount.

5 So in any case, whether it was one claimant or 30,000
6 claimants, if there is an objection to a claim, that is the
7 prima facie statement; the law and the rules presume a duly
8 filed claim is deemed allowed. And the case law then says if
9 the debtor or trustee in a Chapter 7 case or in a Chapter 11
10 case objects, that is a prima facie challenge to that claim.
11 And then you -- the stage is set for an adjudication, and you
12 then go to the traditional burdens of proof of the claimant
13 going forward.

14 So in a hypothetical case, if the claimant files a
15 proof of claim that said I'm owed X dollars -- it doesn't
16 matter whether it's liquidated or unliquidated -- and supports
17 it with some basis on which that claimant asserts the
18 entitlement: promissory note, judgment, complaint, something
19 like that; and then the objecting party rebuts that by an
20 objection based upon something. Not just I object because I
21 object, but I object because satisfaction, I didn't do it, you
22 compromised, discharged, whatever defense, then that rebuts the
23 prima facie case. And at trial, the plaintiff has the burden
24 of going forward.

25 I believe that's the same proper approach. And this

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1 Frascella case that I cited, it's a bankruptcy court from 2007,
2 and it's at 360 B.R. 435. And I believe the message from there
3 is that for estimation, you treat it like a -- like you would
4 do it on a claim objection.

5 That's another way of saying that when the debtor
6 files its -- or its estimation and says we didn't cause the
7 fire even if our equipment was the source of ignition,
8 which -- excuse me. Even if our equipment was the cause of
9 fire, we are not liable for the fire, we are not legally liable
10 under any theory, then that frames the issue and then the
11 burden of going forward is on the claimant.

12 So, in my view, when the debtors respond to the basic
13 questions that the TCC and the subrogation committee and some
14 of the individual fire groups have said, show us your theory.
15 In other words, when Mr. Orsini at the last hearing said, we do
16 not concede liability, only causation, then I think a number of
17 the lawyers then and a number of the lawyers now have said
18 well, show me what it is, what is your theory. And I believe
19 that's the proper thing.

20 So my sense is that in order to deal with the
21 discovery process, that Mr. Orsini and his side have to make
22 the prima facie -- have to pretend, if you will, engage in what
23 they would do if they were faced with all the claims that they
24 are now asking be estimated. They would respond presumably by
25 saying, we don't owe it for the following reasons: inverse

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1 condemnation, legal question. Causation, Tubbs fire,
2 exonerated by the CAL Forest. The other fires -- Camp and the
3 other fires, we were the ignition source, but we didn't
4 cause -- we are not liable for the following reason. And then
5 some explanation.

6 And then if I were presiding over the estimation
7 trial, which again, for those of you that are not bankruptcy
8 lawyers, this is not a traditional trial; it is an estimation
9 in a procedural way that the trial court -- the estimating
10 court is given broad discretion on how you proceed, who -- how
11 long, and what degree of proof, and so on. And at the end of
12 the day, the estimator determines, well, I agree with the
13 debtors' argument, and therefore I estimate the claim at zero.
14 Or I agree with the victims and the evidence supports that the
15 Tubbs fire and all these other fires were the legal
16 responsibility of PG&E, and therefore the estimation goes to
17 the other extreme, or somewhere in between. So that's the
18 process.

19 Now, with that intro, we turn to the question of well,
20 what should we be doing about discovery. Mr. Orsini has
21 complained about some of the ways that the TCC has responded or
22 has initiated discovery. But he, on the other hand, in his
23 August 24th letter, has said we'll give you all this
24 information.

25 I haven't -- certainly haven't studied that

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1 information, but I have read his letter. And I believe his
2 letter invites and says -- let me -- excuse me for one minute.
3 It says, we've provided this 300 pages of this, and 800
4 interrogatories of that, and we've given access to this
5 database, and here's what you need to know. I don't know
6 whether that's sufficient, but to me it's partway towards
7 responding to the very basic written interrogatories that the
8 TCC has served on the debtors that says, tell me why you're
9 liable -- or tell me why you're not liable, and tell me why we
10 don't have claims.

11 So that's a rambling way of -- Mr. Orsini, of telling
12 me -- telling you I think you've got to -- you've got to come
13 out and lay on the line what is your legal theory -- are your
14 legal theories. And then that will switch the burden. If we
15 were having the trial, you would have done it, and they would
16 have to prove their case. So take it from there.

17 MR. ORSINI: Thank you, Your Honor.

18 For the record, Kevin Orsini from Cravath for the
19 debtors.

20 Understand your points, Your Honor. Certainly agree
21 on the burden of proof part.

22 With respect to identifying the bases for our denial
23 of liability, I candidly don't think it's that complicated.

24 THE COURT: Okay.

25 MR. ORSINI: With respect to the North Bay fires in

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1 particular, we've litigated those cases for over a year and a
2 half in state court. Among the materials that we provided to
3 the debtors -- I'm sorry, we are the debtors -- to the TCC in
4 that letter was -- were all the interrogatory responses,
5 request for admission responses that detail where we are.

6 Also, just stepping back, the general idea, the
7 concept, the complaint that they don't know what our position
8 are, I think is refuted by their own filings. If you go back
9 to their objections to the estimation hearing, they had two
10 appendices, Appendix A and B, which I have no doubt Your Honor
11 has fully committed to memory.

12 But Appendix A went through the legal elements of
13 their claims. Appendix B went through the disputed factual
14 issues.

15 It's just a long way of saying, they know what the
16 issues are.

17 THE COURT: Well, but what about the short way of
18 answering interrogatories 1 and 2?

19 MR. ORSINI: And, Your Honor, I believe we've done
20 that, frankly, by providing the information we've already
21 provided. We will provide formal responses to those
22 interrogatories that incorporate those prior statements.

23 THE COURT: But that closes the book --

24 MR. ORSINI: Yes, I agree.

25 THE COURT: That closes the chapter on what -- your

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1 theory.

2 MR. ORSINI: I agree, Your Honor.

3 THE COURT: You can't come up with another theory next
4 week on something else.

5 MR. ORSINI: I understand.

6 THE COURT: Okay.

7 MR. ORSINI: I understand.

8 THE COURT: Well, I want to see if you're in
9 agreement.

10 MR. ORSINI: I think I've closed most of my theories a
11 long time ago in responding to interrogatory requests.

12 THE COURT: You may have, and I haven't memorized
13 them. But I just want to make sure we're on the same page.

14 MR. ORSINI: We're on the same page there, Your Honor.

15 One other note, I just want to -- well, two other
16 points.

17 With respect to discovery, I think Your Honor's right
18 that what we provided that's referenced in my August 24th
19 letter is a significant amount of information that goes a long
20 way towards swinging the pendulum in the way Your Honor's
21 described. That is not the sum total of what we've agreed to
22 do with respect to discovery.

23 You may recall during the long discovery status
24 conference we had a couple of weeks ago, there were references
25 to the letter that Mr. Macon had sent me back in July. It was

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1 about an eighteen-page discovery letter that was sent sort of
2 both by the state subrogation trial lawyers and the state
3 individual-plaintiff lawyers.

4 THE COURT: I -- it's hard to remember.

5 MR. ORSINI: And we've now responded to that. We have
6 said that -- for example, they had identified eighty -- more
7 than eighty fact depositions they wanted to take. We've said
8 fine, we won't object to those eighty fact depositions.
9 They've said they want a number of what are effectively Rule
10 30(b)(6) depositions on specified topics. We've said sure. We
11 understand there will be some key issues, like our vegetation
12 management programs, like de-energization. We obviously need
13 the notices so we could all get comfortable with the scope of
14 the deposition. Standard process procedure.

15 THE COURT: Right.

16 MR. ORSINI: And we've also identified dozens of
17 outstanding discovery requests that we've agreed to respond to.
18 Haven't gotten response to that yet; I'm sure we'll meet and
19 confer on that.

20 I did receive last night another letter from the TCC,
21 another eighteen-page letter, that itemized discovery they
22 want. I'm trying to figure out how those two letters work
23 together. There was a request that I respond with my position
24 on all that discovery by today. Needless to say, that hasn't
25 and won't happen. But we're working through those issues.

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1 And then more generally, there's obviously going to be
2 discovery going the other way. None of that, I don't think, is
3 ripe for today.

4 THE COURT: But it's discovery of -- I mean, not
5 discovery of individual claimants; not by --

6 MR. ORSINI: So two things, Your Honor.

7 One, with respect to the third -- the subrogation
8 insurers, we need discovery into their underlying claims files
9 to make sure that they actually have validity to those claims.

10 THE COURT: No, I understand.

11 MR. ORSINI: So we're pushing forward on that, which
12 they --

13 THE COURT: Is that something of predicate to the
14 estimation?

15 MR. ORSINI: I think it absolutely is, Your Honor. We
16 have to be able to show what it is that they actually have paid
17 out. In fact, they --

18 THE COURT: But if a victim lost a house worth a
19 million dollars, and an insurer paid them 800,000 dollars,
20 there's still a million-dollar potential claim, right?

21 MR. ORSINI: Well, no. The subroga --

22 THE COURT: That might be two claimants.

23 MR. ORSINI: Well, okay, yes, in your hypothetical.
24 I'm looking more at the other hypothetical, Your Honor. Which
25 is in a circumstance where the insurer has paid out 1.2 million

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1 dollars for a home that's actual worth only a million dollars.

2 THE COURT: Okay.

3 MR. ORSINI: And maybe they've done that because they
4 misestimated the value. Maybe they've done that because they
5 just tendered total loss. Maybe they've done that because they
6 think the person is going to rebuild.

7 THE COURT: Sounds like a disputed claim to me.

8 MR. ORSINI: We're going to be entitled to challenge
9 all that information, and we certainly need discovery to get
10 into that.

11 On the individual front, Your Honor. Look, this is I
12 think -- I think we all know, this is the hardest part of this
13 whole case, how to value the individual claims.

14 THE COURT: Right.

15 MR. ORSINI: Ms. Dumas -- you've heard from --

16 THE COURT: But we've got to start by knowing where
17 your client admits culpability.

18 MR. ORSINI: I understood that, and we're on the same
19 page on that front.

20 THE COURT: Okay.

21 MR. ORSINI: I understand that.

22 THE COURT: Okay.

23 MR. ORSINI: But what we heard earlier today from Ms.
24 Dumas is what we've heard throughout. Which is effectively, as
25 Your Honor described it, backing into a number. Tell us what

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1 you got and maybe we'll take that, or a little bit more, or a
2 little bit less. Right.

3 Estimation is actually going to require them to show
4 what their claims are worth, not what we can pay. Now,
5 obviously that's not going to include full, individual, damage
6 discovery with respect to every single one of the 30,000-
7 plus --

8 THE COURT: Right.

9 MR. ORSINI: -- individual plaintiffs.

10 THE COURT: Right. We can't do that.

11 MR. ORSINI: That's one extreme; we're not going
12 there. Right.

13 We also can't go to estimation with nothing.
14 Certainly, when they're throwing out numbers that are backed
15 into based upon net distributable value as she described.

16 And so one step in that process, Your Honor, is the
17 much discussed, never seen, BrownGreer database. I believe we
18 do have an agreement. I've said that before, we don't have a
19 stipulation in yet. Mr. Skikos, who's one of the individual
20 plaintiff's lawyers, is here in the courtroom. I'd ask him to
21 update both of us on the status of that. But that's a process
22 to try to get more claims information, to try to see if there's
23 a process where we can agree on how we can start to close the
24 gap between my number, which is significantly below ten
25 billion, and the TCC's number, which ranges from thirty to

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1 fifty depending on the day.

2 But if that's unsuccessful, we are going to need to be
3 able to test some additional information so that we give the
4 Article III judge or Your Honor, who's doing the estimation,
5 some basis to extrapolate what these claims are worth.

6 And I candidly haven't come up with a perfect answer
7 to that one yet. It may involve a questionnaire -- that's been
8 done in a lot of other bankruptcy cases -- that's given to some
9 statistically significant group of people. It may be some
10 limited sets of documents that go to some statistically
11 significant set of people by fire. Is a long way of saying I
12 don't know the right answer yet, Your Honor, I don't think any
13 of us do, but that's going to be a key issue that needs to be
14 addressed as well.

15 THE COURT: So what do we do for now for discovery
16 purposes? Do you want to stick with the meet and confer or do
17 we --

18 MR. ORSINI: I believe so, Your Honor.

19 I have -- so I have a letter out to them which tells
20 them what we'll do in response to Mr. Macon's letter. I have a
21 letter from the TCC from last night. I wasn't able to get a
22 response back today, but we're going to try and interlock those
23 two letters and see where the overlap is. I bet a lot of it
24 will be things where we've already said we'll do it. To the
25 extent that there are additional things that were not -- we

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1 haven't already committed to do, we'll obviously assess what
2 our position is on that.

3 And I think that we continue the meet and confer
4 process on that front. And we have some interrogatories that
5 have been served on that we'll respond to --

6 THE COURT: Okay.

7 MR. ORSINI: -- in the way the Court described today.

8 THE COURT: Mr. Julian, do you want to tell me what to
9 do?

10 MR. JULIAN: Your Honor, the estimation issue before
11 this Court and Judge Donato is different than the issue in the
12 state court.

13 THE COURT: Correct.

14 MR. JULIAN: We sent them interrogatories that ask
15 them to explain the legal and factual basis for denying
16 liability for the fires that they --

17 THE COURT: That's your interrogatories 1 and 2,
18 right?

19 MR. JULIAN: Yes.

20 THE COURT: Yeah.

21 MR. JULIAN: And we would like that answered within
22 two days. The interrogatories that they served us Saturday
23 night, their answers in state court are insufficient for two
24 reasons.

25 THE COURT: But -- well, go ahead, and then I have a

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1 question.

2 MR. JULIAN: The first is they have nothing to do with
3 Camp. Camp Fire litigation just started. They've never served
4 interrogatory answers.

5 Second, the interrogatory answers that they served on
6 the plaintiffs' lawyers in state court do not explain the legal
7 basis or factual reasons for estimating the claims as zero in
8 this court. And we need that basic answer to those
9 interrogatories and a production of the documents in support of
10 the interrogatories within two weeks.

11 They've spent thirty million dollars, Your Honor,
12 getting ready for today. They're ready for trial, I get it.
13 I'm not.

14 And, Your Honor, they have the documents that show
15 their liability.

16 THE COURT: Okay, wait one second here.

17 MR. JULIAN: We don't.

18 THE COURT: I'm looking at your interrogatory number
19 2. And so number 1, I'm -- it's referring to CAL FIRE, so I
20 want to leave that for a minute.

21 It seems to me for interrogatory number 2, for each
22 fire -- so let's just pick Atlas, that's a fire that's
23 not -- we talked about today. So affirmative defenses, legal
24 basis to say not liable; that's just the same thing twice, I
25 think. And the factual basis for your nonliability. I mean,

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1 and the rest of it -- I'm not going to read the rest of them to
2 you. Why -- you're telling me that the responses they've done
3 in other state court stuff is not responsive to those
4 questions?

5 MR. JULIAN: I don't believe so.

6 THE COURT: And --

7 MR. JULIAN: These are simple and straightforward.

8 THE COURT: And what about Mr. Orsini's reference in
9 his August 24th letter that references a bunch of databases and
10 what have you, the answers aren't there?

11 MR. JULIAN: Well, that was given to us Saturday
12 night. And the databases --

13 THE COURT: Okay, I don't know. I don't look at them.

14 MR. JULIAN: What we did last night was to give him
15 specific targeted discovery for the documents, the inspection
16 reports. And these basic inspection reports and the basic
17 documents that they have and they've already prepared for the
18 thirty million dollars they charged the estate should be turned
19 over to us. It's already --

20 THE COURT: But I'm still trying to figure out
21 whether -- when you're waiting for answers to interogs 1 and
22 2, and you're serving them with more. If he -- don't you need
23 to do it in steps? In other words, don't you need to see what
24 their position is on interrogatories 1 and 2? And I'm -- I'm
25 not --

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1 MR. JULIAN: Well -

2 THE COURT: I'm not saying you can't get the other
3 stuff; I'm saying don't you need to get there by pinning them
4 down on --

5 MR. JULIAN: No.

6 THE COURT: -- what is the theory per the fire?

7 MR. JULIAN: Well, let me explain that.

8 First, we asked for also in our letter request with
9 the interrogatory request, for all documents that support their
10 legal and factual basis, and a description of the witnesses.

11 THE COURT: I think your interrogatory itself did.
12 For each fire, identify separately all documents.

13 MR. JULIAN: And well, and the letter says to produce
14 it.

15 THE COURT: Okay.

16 MR. JULIAN: Not only identify it but produce it.

17 THE COURT: Okay. I understand. But that's my point.
18 If they -- again, leave Camp aside for the moment -- no, I'm
19 sorry. I'm sorry.

20 MR. JULIAN: Camp is in there.

21 THE COURT: No, no, I misspoke.

22 The CAL FIRE report relates to Tubbs, correct? So if
23 a -- they answered interrogatory number 2 the way you think
24 they should, with documents, then that's what you want.

25 MR. JULIAN: And the explanation of the legal theory

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1 and the factual basis too.

2 THE COURT: I'm reading your interrogatories; that's
3 there.

4 MR. JULIAN: Yes.

5 THE COURT: Affirmative defenses, contentions, not
6 liable. I mean, those are very straightforward. I'm agreeing
7 with you, they are simple. There are not two interrogatories,
8 there are about eight, but they're simple.

9 MR. JULIAN: Then we're in agreement, Your Honor.

10 THE COURT: Okay. So I go back to my question again.

11 If I tell Mr. Orsini, you have to answer
12 interrogatories 1 and 2, why do you need the second, third set,
13 whatever you served on them yesterday? I'm just trying to
14 figure out the sequencing for this stuff.

15 MR. JULIAN: Because we've taken an educated look at
16 what he's written in his letters recently about the issues on
17 which they will deny liability. And the fifteen pages of
18 documents that we've sent to them last night are the documents
19 that we need for that for that.

20 THE COURT: But let me give you an example. I can't
21 keep track of it as thoroughly as those of you who are living
22 this thing twenty-four hours a day, but there's one fire where
23 Mr. Orsini says that there was a healthy tree that had a limb
24 fall, and he believes that -- I guess his theory is that the
25 fire was caused by that healthy limb that fell, and therefore

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1 the company didn't do anything that makes it liable. So that
2 would be to me an explanation, we're not liable for fire X
3 because it was caused by a healthy branch that fell, even
4 though it was within the proper limits, et cetera, et cetera.
5 That's an explanation, right? You would agree that's an
6 explanation? Whether you agree or disagree with the merits of
7 it, that would be the kind of thing that he would say why
8 his -- the debtors are not liable, right?

9 MR. JULIAN: Correct.

10 THE COURT: Okay.

11 MR. JULIAN: And then in response, which is why we
12 sent the letter last night, we need copies of their inspection
13 reports on that tree, their maintenance records on that tree,
14 the report by the tree trimmers on that tree, to show that they
15 did not do their job with respect to that tree.

16 THE COURT: But you don't need any of that if he
17 doesn't say the tree did it? In other words, it's -- you want
18 responses if the answers are exculpatory, right?

19 MR. JULIAN: Right.

20 THE COURT: If he says we're not liable because the
21 tree fell by its own causes, then you want explanations, well,
22 what's the record, and et cetera, et cetera. And I -- we don't
23 have to go into the details.

24 But if he doesn't say -- if he says well, that -- the
25 only reason that fire is is because we know that some arson

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1 started that fire, then you don't need tree reports. You just
2 need the explanation for his defense.

3 MR. JULIAN: But on some of these, Your Honor, let's
4 face it, we know what they're going to say.

5 On Camp, for example, the C-hook was worn or broken.

6 THE COURT: I know.

7 MR. JULIAN: We need all the inspection reports on
8 that.

9 THE COURT: No, I know that. I know that.

10 MR. JULIAN: There's no reason to delay that.

11 Your Honor, they spent thirty million dollars getting
12 ready for this day; they can turn it over to us.

13 THE COURT: Do you need it all for an estimation
14 trial?

15 MR. JULIAN: Yes, we need it.

16 THE COURT: And why? Tell me why? This is not a
17 trial, it's an estimation trial.

18 MR. JULIAN: Correct.

19 THE COURT: So if the trial is compressed, as we know
20 estimations are supposed to be, why do you need all the
21 details?

22 MR. JULIAN: Because they are the ones who are saying
23 they're not liable. They're the ones who say you need five
24 individual trials on liability for five individual fires. If
25 they are the ones who are placing this at issue, we can only

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1 respond to the fact that they are saying they are not liable
2 because they supposedly did a good job repairing and inspecting
3 their C-hooks by looking at the documents that show they did a
4 terrible job.

5 THE COURT: Okay. I got you. I just want to clarify
6 it in my mind.

7 MR. JULIAN: And they have spent thirty million
8 dollars getting ready for this day.

9 THE COURT: You're not -- you're saying that -- I got
10 it.

11 MR. JULIAN: They have the documents, Your Honor.
12 What I would respectfully request is two things. I would like
13 you to order them to answer those interrogatories 1 and 2
14 within fourteen days.

15 THE COURT: Well, you said two days a minute ago,
16 so --

17 MR. JULIAN: Within fourteen days. And within five
18 days, a week, to tell us what, in our letter of last night,
19 they will produce on an expedited basis, and what they will not
20 produce.

21 THE COURT: Let me get the other gentleman behind you
22 who wants to be heard. I'll see what Mr. Orsini wants to do
23 with that. We're not going to go all afternoon on this, so --

24 MR. JULIAN: Thank you, Your Honor.

25 THE COURT: Yes, sir?

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1 MR. CAMPORA: Your Honor, my name is Steve Campora.

2 THE COURT: Oh, yes. Mr. Campora. You've been here
3 before.

4 MR. CAMPORA: I participated in the NorCal discovery,
5 and I have a very different view than Mr. Orsini as to what's
6 been done and not done. The parties negotiated back and forth
7 over several months for a TAR program to produce documents,
8 PG&E delayed that more than a year, with repeated promises to
9 produce the documents. And I'll explain to you why it's
10 necessary.

11 They were supposed to done on February 15. PG&E filed
12 bankruptcy on January 29th and stopped looking for documents.
13 Now they're coming to this Court, denying liability on every
14 fire, while at the same time not giving us the documents.

15 THE COURT: No, I understand. But you're saying this
16 idea. I'm just saying it differently.

17 MR. CAMPORA: No. No. There's the issue.

18 THE COURT: Okay.

19 MR. CAMPORA: PG&E has lots of policies, Your Honor.
20 They'll produce them forever. There's lots of policies. We
21 could read them. They're great policies.

22 The problem is, they don't follow them, and the
23 documents you need to show they don't follow them are the
24 emails between the employees and the emails between the
25 managers and the supervisors, and the documents that say we're

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1 6,000 trees behind, or there are hazard trees that haven't been
2 found by our process, and we haven't got it done. We haven't
3 cut the 2015 trees, and we're in 2017.

4 So to come in and say that he's given us these
5 documents, they've given us six million documents. Five
6 million of them are duplicates. And in addition to that, Your
7 Honor, the documents -- we didn't take any depositions in
8 NorCal, because PG&E objected to us taking the depositions
9 until they produced all the documents, and then they didn't.
10 And that doesn't include Camp.

11 So what's happened is there are hazard tree analysis.
12 There's all kinds of documents and people that we haven't
13 gotten or received. And from my perspective, if PG&E knew they
14 were going to object and claim they weren't liable for every
15 fire -- I'm not sure why they filed bankruptcy -- but they knew
16 they were going to deny liability, why'd they stop looking for
17 the documents?

18 THE COURT: Well, I can't answer that. And I --

19 MR. CAMPORA: Okay. But what I'm saying is we need
20 those documents.

21 THE COURT: Okay. Understood. I want to move
22 forward. I'm only trying to figure out what to order here
23 today, so --

24 MR. CAMPORA: All I'm saying is, Your Honor, you're
25 talking about having an estimation proceeding, with us having

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1 time to put on experts or however it works. We can't do that
2 without evidence. And they've been delaying the discovery.
3 They delayed it against this morning, contesting producing
4 documents that are clearly relevant to the Camp fire. And
5 until we get the evidence, we can't do our job no matter what
6 the estimation process turns out to be until we're given an
7 opportunity to view the evidence.

8 THE COURT: Mr. Campora, I got to take someone behind
9 you.

10 MR. CAMPORA: Thank you.

11 MR. MARSHACK: I'll make it quick, Your Honor.

12 THE COURT: You're back again. Three times.

13 MR. MARSHACK: I'll make it quick. Richard Marshack,
14 Marshack Hays, on behalf of the SLF group, 5,500 fire victims.
15 SLF is involved in all but two fires. We are involved in
16 Tubbs, pursuant to this Court's order for relief from stay.

17 THE COURT: You don't have to go into detail. I got
18 to move this case along.

19 MR. MARSHACK: Okay.

20 THE COURT: Tell me what you want me to do.

21 MR. MARSHACK: Here's what I want you to do: for
22 example, break today. CAL FIRE, through Mr. Pascuzzi, looked
23 at us and said, we're getting requests from you guys. We're
24 getting requests from TCC. Please coordinate. Here's our
25 request, that all discovery is served on all -- is served on

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1 everybody, and all responses are served on everybody, and that
2 the SLF group participates in the meet and confer.

3 Again, all discovery served on everybody. All
4 responses served on everybody. You've asked that there be an
5 active meet and confer. We ask that we be invited to the meet
6 and confer.

7 Thank you, Your Honor.

8 THE COURT: Mr. Orsini, where do we go from here, and
9 what are you going to do? You going to -- I mean, Mr. Julian
10 had his deadline. Oh, wait. One more.

11 MR. ORSINI: I'm not allowed to stand up here, Your
12 Honor.

13 THE COURT: One more. Yes, sir.

14 MR. SKIKOS: I shot Mr. Orsini down. Let the record
15 reflect that.

16 My name is Steve Skikos. I am the keeper of the
17 BrownGreer database. We have an agreement.

18 THE COURT: It exists, huh?

19 MR. SKIKOS: It exists. We have an agreement. And I
20 have been dying since January 31st, the first time I came into
21 this courtroom, to talk about case specifics. But I do things
22 by consent. And so I can tell you, I read the Gibson reference
23 Your Honor put in his order entitled, "The Judicial Management
24 of Mass Tort Cases".

25 I have gone through all the factors that she

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1 articulated in that. I went through the Dow Corning case,
2 which I did in this courtroom in 1991. I've gone through the
3 post-2000 historical settlements and how we can get informed
4 consent done. I've gone through the litigation data. And
5 because I do things by consent, I'm not going to go through it
6 all here, and I would probably drive everybody crazy and piss
7 everybody off.

8 But I will say this. We have some serious work to do
9 on the case-specific side. BrownGreer is not the elephant in
10 the room. The elephant in the room is the over 10,000 people
11 who have no idea what's going on in this bankruptcy.

12 I've run the data on Prime Clerk, and I've run the
13 data in BrownGreer, and we are way behind.

14 THE COURT: Of what? I mean, what am I supposed to
15 do? What's the action item for me today?

16 MR. SKIKOS: Well, the action item for you today,
17 because I do things by consent, is to understand that that's an
18 issue. The estimation, my proposal is going to be that the
19 estimation be based on total loss, because there's going to be
20 late claims. I have other proposals that I'm going to make,
21 but like I said, we have to go through those.

22 Here's my endgame. The people who have been impacted
23 by these fires need the opportunity to go through four parts of
24 informed consent. You talk about the disclosure statement.
25 There are four parts of the informed consent in this case.

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1 The first part of the informed consent is meaningful
2 participation, an opportunity to be understood, to get the
3 facts to make a decision about participation in this
4 bankruptcy. They don't have them yet.

5 The second part of informed consent is the part of
6 this estimation plan. We have to connect reality to the plans
7 that are being presented. The biggest mistake that we can make
8 in this case is to have an estimation hearing on experts only.
9 We can't do that. We have to have real people.

10 THE COURT: Well, I must interrupt you. We're talking
11 about -- you're talking about how the estimation process
12 should -- the trial or the hearing should be conducted. That's
13 not something I can deal with today. That's for another judge
14 to deal with.

15 MR. SIKOS: Right. But it connects.

16 THE COURT: Well, okay.

17 MR. SIKOS: This all connects to the disclosure
18 statement you're talking about, because I've written a boatload
19 of informed consent letters, and the informed consent process,
20 which is part 3, has to have certain information. The idea
21 that the people are -- yes, they're not -- are they going to
22 read -- ten percent of them are going to read it? Well, they
23 need information to make an informed decision. We're going to
24 get there.

25 My point is this. It's not the elephant in the room.

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1 BrownGreer is not going to value cases. I'm not the oracle at
2 BrownGreer. I can't tell you what the value of the tort cases
3 are. BrownGreer is not the 800-pound gorilla. The 800-pound
4 gorilla is the presentation of plans without a single
5 evaluation of a consensual review of an individual case.

6 THE COURT: I don't know what to make of your
7 statement. I hear your words. I don't know how to fit it into
8 the dynamics and the process of the Chapter 11 process and the
9 estimation mandate of Section 502(c).

10 MR. SIKOS: You asked about 502(c). And there is
11 something in the mass tort world --

12 THE COURT: That's right.

13 MR. SIKOS: -- that is connected to that.

14 THE COURT: That's right.

15 MR. SIKOS: There are what we call science days,
16 liability days, human being days.

17 THE COURT: Right.

18 MR. SIKOS: The only difference between your
19 estimation proceeding and what we call in the MDL world the
20 science day is that you make a decision. But we have done
21 those before successfully, and if you merge what has been done,
22 the best of the mass tort world with the bankruptcy world with
23 the fire world, we can actually come up with a process that we
24 can try to consensually provide to you to conduct an estimation
25 trial that has credibility and meaning.

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1 And I'm not saying we should do this now. I'm saying
2 we should have a meet and confer. We should discuss it. But
3 we have enough experience in the MDL world. I've been court-
4 appointed liaison ten times.

5 THE COURT: But what? But I don't know what you want
6 to do, so --

7 MR. SIKOS: We're going to have real people at the
8 estimation hearing.

9 THE COURT: Okay.

10 MR. SIKOS: We're going to have real evaluation of
11 cases with -- under California law, and part of the BrownGreer
12 agreement with Mr. Orsini, who he did in good faith, is to have
13 some mediations to set this up.

14 The estimation hearing that we are ultimately going to
15 do should not just be expert. It should be real people, and it
16 should be real evaluations. I know I'm jumping ahead, but --

17 THE COURT: No, you're not jumping ahead. I'm not
18 presiding over the estimation hearing. A district judge
19 upstairs is going to do that. And he's going to have a status
20 conference very soon. I'm dealing with all these pure
21 bankruptcy issues. Definition of unliquidated.

22 MR. SIKOS: Right.

23 THE COURT: Plan and disclosure statement. You
24 started by commenting on the disclosure statement, and you
25 haven't said anything about a disclosure statement. So I don't

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1 know what your point is.

2 I mean, I understand the point. I don't mean to sound
3 like I'm dismissing your concerns. I accept your concerns.
4 But it's not something I can deal with today. So what do you
5 want me to do today?

6 MR. SIKOS: Okay. So today. There's been an issue
7 raised regarding BrownGreer.

8 THE COURT: Not today.

9 MR. SIKOS: There isn't? Yes. No, Mr. Orsini raised
10 it. We have an agreement.

11 THE COURT: Yes. You have an agreement.

12 MR. SIKOS: Right. We have an agreement.

13 THE COURT: That to me is a nonissue today, but yes --

14 MR. SIKOS: Correct.

15 THE COURT: You have an agreement.

16 MR. SIKOS: And we're moving forward.

17 THE COURT: That's right.

18 MR. SIKOS: And I've raised some issues that I think
19 we need to have a meet and confer on for the terms of the
20 ultimate estimation.

21 THE COURT: No, that's fine. I'm all for that. But
22 it's not an actual matter for me today.

23 MR. SIKOS: No. This was my speech to the group.

24 THE COURT: You're welcome to make it.

25 MR. SIKOS: Thank you.

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1 THE COURT: Mr. Orsini, I think that we got --

2 MR. ORSINI: I'm still not allowed to stand, Your
3 Honor.

4 THE COURT: Oh, well.

5 MR. MCCALLEN: Sorry, Your Honor. But very, very
6 quickly. Okay.

7 THE COURT: I'll be back in a few minutes. Just make
8 your speech.

9 MR. MCCALLEN: Your Honor, we --

10 THE COURT: No, go ahead.

11 MR. MCCALLEN: Your Honor, we agree with the TCC's
12 position.

13 THE COURT: Just restate your name again.

14 MR. MCCALLEN: I'm sorry.

15 THE COURT: I know who you are, but state it for the
16 record.

17 MR. MCCALLEN: Of course, Your Honor. Benjamin
18 McCallen.

19 THE COURT: McCallen.

20 MR. MCCALLEN: On behalf of the ad hoc subrogation
21 group. Your Honor, we agree with the TCC's position with
22 respect to the interrogatories, and I just wanted to make one,
23 really, point of clarification. As Your Honor pointed to in
24 our submission, when the TCC sent their interrogatories, we
25 submitted a letter to the debtors asking for them to identify

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1 the elements of our damages claims --

2 THE COURT: Right.

3 MR. MCCALLEN: -- they dispute and the basis for that.

4 THE COURT: Right.

5 MR. MCCALLEN: So to the extent that Your Honor
6 ultimately grants the relief that the TCC is asking for to
7 order the debtors to respond to the interrogatories, we'd just
8 like to clarify they'd have to respond to our letter as well.

9 THE COURT: I mean, it's essentially their
10 interrogatories plus your letter. That's just your version of
11 it. I mean, it's the stuff you need to prepare yours.

12 MR. MCCALLEN: Completely agree, Your Honor.

13 THE COURT: Yes. Okay.

14 MR. MCCALLEN: I just wanted to make sure that the
15 record was clear on that.

16 THE COURT: Okay.

17 MR. PASCUZZI: Your Honor, Paul Pascuzzi, cocounsel
18 with the Attorney General's office for CAL FIRE on the
19 discovery issues. Back to the discovery issues.

20 THE COURT: Back to the discovery issues.

21 MR. PASCUZZI: Your Honor, again I just -- I'm looking
22 for coordination and some help so that we're not getting
23 subpoenaed by the tort committee, the debtors --

24 THE COURT: Well, you said before you wanted to do
25 that, yes.

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1 MR. PASCUZZI: -- the plaintiffs' lawyers. Yes. And
2 if it seems that it's efficient to have a depository/repository
3 where everything goes that CAL FIRE produces, then everyone can
4 get it. If there's something else, they can work through
5 together. But this notion of us getting a subpoena from every
6 single party-in-interest for similar stuff or the same stuff,
7 it's just going to be inefficient.

8 THE COURT: So what would you like me to do?

9 MR. PASCUZZI: I'd like you to order the parties to
10 coordinate their discovery to CAL FIRE, so that we're looking
11 at one request and we can respond to it, instead of having to
12 deal with multiple requests that may be different.

13 THE COURT: Okay. So procedurally, how do you want me
14 to do it? I mean, I can't just grant a motion on the fly here,
15 although what you're saying makes sense. Do you think you
16 could do a proposed order and circulate it to the principal
17 players? Would that work?

18 MR. PASCUZZI: I could.

19 THE COURT: I mean, tell me what would work for you
20 procedurally, so you don't have to reinvent the wheel and deal
21 with fifteen different requests.

22 MR. PASCUZZI: Understood, Your Honor. What I'm
23 hearing from people when I ask them to do this, and I haven't
24 spoken to the debtors yet about it, but what I'm hearing on the
25 other side is they're not coordinating.

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1 So we're working very well with the tort committee
2 folks. We're getting separate subpoenas from the Singleton
3 group. And we're asking them to coordinate, and I'm hearing
4 that's not possible for some reason.

5 So I need some help, for you to say coordinate, and
6 we'll see if it works out. And if it doesn't, we'll be back
7 here saying --

8 THE COURT: Well, let's use a more traditional
9 procedure using the legal process and motions and practices.
10 Make a motion for, sort of, a protective order for facilitating
11 your client's obligations to whomever has a right to subpoena
12 you for anything and set it out on an expedited basis. I'll
13 shorten time. I mean, we don't have to make it overly
14 cumbersome, but I can't make a ruling today for people that
15 aren't even here.

16 I realize the Singleton group, through its counsel,
17 has been very proactive, and certainly the TCC has, and Mr.
18 Pitre and Mr. Kelly and others, but there are others out there
19 that are not here, but you shouldn't be doing this over and
20 over again. So I'm all for it, and to the extent that you can
21 get a buy-in by Mr. Orsini and Mr. Julian and their clients,
22 that makes it even better. And in effect, set it as the
23 protocol for all discovery going forward.

24 MR. PASCUZZI: That sounds fine, Your Honor.

25 THE COURT: Try to make it work. Okay. Well, it

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1 would make sense.

2 MR. PASCUZZI: We're here for the status conference to
3 discuss these issues, so I'm bringing it up for discussion.

4 THE COURT: I'm glad you did.

5 MR. PASCUZZI: Thank you, Your Honor.

6 THE COURT: Mr. Orsini, the motion from Mr. Julian is
7 to give you a deadline.

8 MR. ORSINI: No. Your Honor, he modified the motion
9 while you were --

10 THE COURT: I know he did.

11 MR. ORSINI: -- speaking to others.

12 THE COURT: But let's --

13 MR. ORSINI: But we have consent here.

14 So on Mr. Pascuzzi's last point, I agree with him. We
15 should be coordinating that. They should only get one
16 subpoena. So we'll work on that with him, Your Honor.

17 THE COURT: But you agree, I can't just go on the fly
18 and do it.

19 MR. ORSINI: No, no. I agree. I completely --

20 THE COURT: I've got to do it procedurally correctly.

21 MR. ORSINI: Completely agree with that procedurally,
22 Your Honor.

23 THE COURT: And let me make a further addition to you.
24 A number of you are going to have your introduction in the
25 bankruptcy world to an experienced judge who is not a

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1 bankruptcy person. So it's a whole different terminology that
2 people are going to be using.

3 MR. ORSINI: He and I will have that in common, Your
4 Honor.

5 THE COURT: Okay. Just don't tell him you don't know
6 anything about that.

7 MR. ORSINI: So with respect to the two open discovery
8 items that Mr. Julian asked for deadlines on: the
9 interrogatories 1 and 2 and --

10 THE COURT: And the McCallen addendum.

11 MR. ORSINI: Right. And the letter that I got last
12 night.

13 THE COURT: Right.

14 MR. ORSINI: On the interrogatories, I've agreed with
15 Mr. Julian that we'll answer them not in fourteen days but in
16 ten, next Friday. Not this coming Friday, Friday the 6th. And
17 we will --

18 THE COURT: 9/6.

19 MR. ORSINI: Yes. Yes, Your Honor. And we will
20 respond to the letter that I received last name from Ms. Morris
21 with additional discovery requests by next Tuesday, September
22 3rd.

23 THE COURT: And what about Mr. McCallen's? He get
24 that same courtesy, that same deadline?

25 MR. ORSINI: Remind me again which one.

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1 THE COURT: Well, it's -- Mr. McCallen, you --

2 MR. MCCALLEN: No.

3 THE COURT: Go ahead. You can say it from there.

4 It's sound from there. Just make sure you're on the

5 microphone.

6 MR. MCCALLEN: Of course. In our letter we asked for

7 the elements of our damages that they were disputing and the

8 factual basis for those disputes.

9 MR. ORSINI: Well, I can identify the elements. The

10 problem with the facts is he still has them, but we'll provide

11 a response to him by next Friday as well.

12 THE COURT: And so Ms. Morris' letter, but what about

13 that -- does that exclude or include the third-party subpoena?

14 I mean, third-party motion to compel, et cetera.

15 MR. ORSINI: Oh. Well, Ms. Morris and I will -- I

16 will commit on the record that Ms. Morris and I can meet and

17 confer this week and try to resolve those open issues.

18 THE COURT: But that includes the third-party doc --

19 MR. ORSINI: Yes, I understand, Your Honor.

20 THE COURT: Okay.

21 MR. ORSINI: I understand.

22 THE COURT: All right. As long as Ms. Morris says

23 she's okay with that, I'm okay with it.

24 MR. ORSINI: Thank you.

25 THE COURT: So, Mr. Orsini, do you -- so I will take

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1 it that you will work with Mr. Pascuzzi to deal with -- it is
2 kind of a unique situation with CAL FIRE.

3 MR. ORSINI: Yes, Your Honor.

4 THE COURT: And certainly don't exclude Singleton,
5 through Mr. Marshack or whoever it is. Mr. Singleton is here.
6 Or one of them. They've been very proactive in figuring out --

7 MR. ORSINI: What I would propose to do, Your Honor,
8 is I will work with Mr. Pascuzzi. If we can come up with
9 somebody that's satisfactory to us, we will then share it with
10 the ad hoc subro group, the TCC, Mr. Singleton. And if there's
11 anybody else here who would like to see that, let me know.

12 THE COURT: Okay. Thank you. I'll take that.

13 All right. Anybody want to add any further?

14 All right. Mr. Karotkin?

15 MR. KAROTKIN: Not on discovery. I don't know --

16 THE COURT: Not on anything.

17 MR. KAROTKIN: I don't know whether you were finished.

18 THE COURT: No, I was going to ask if you'd come and
19 get into our Chapter 13 clinic while you're here in San
20 Francisco and handle a few cases for some of my debtors.

21 MR. KAROTKIN: Sure. Sure. Would be happy to.

22 THE COURT: Okay. What can I do for you?

23 MR. KAROTKIN: Just --

24 THE COURT: Or whatever we need to discuss.

25 MR. KAROTKIN: Just a quick housekeeping matter.

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1 Since I think the consensus is not to file a disclosure
2 statement on the 9th, can we submit a proposed order that
3 would --

4 THE COURT: Yes, but I want you to file something, for
5 lack of a better term, what I call before a term, a disclosure-
6 statement term sheet --

7 MR. KAROTKIN: Outline?

8 THE COURT: -- or outline.

9 MR. KAROTKIN: Okay.

10 THE COURT: I mean, something that gives the different
11 counsel who are representing banks or financial institutions or
12 shareholders what the plan does for them. They can read it in
13 the plan, but it's just helpful as a separate thing, kind of, a
14 preview of the disclosure statement. Be creative. So I will
15 be, you can be.

16 MR. KAROTKIN: Okay. Very well. Thank you, sir.

17 THE COURT: That's all?

18 MR. KAROTKIN: That's it.

19 THE COURT: Okay. So you will have your plan on the
20 9th, and I don't -- I mean, I'm not inviting anybody to do
21 anything. I'm sure those who want to take it and criticize it
22 can do so, but at our follow-up status conference my intention
23 then will be to hear where we go from there in terms of
24 procedural settings.

25 And if the answer is you're not ready to do it --

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1 you're not ready to set, for example, a deadline for
2 objections, or if there's a way to separate out those things
3 that necessarily depend upon the financial terms coming
4 together. If there's a gap in it, et cetera.

5 And I know you're going to want to ask to deal with
6 the exclusivity issue. I won't worry about that for now.

7 If you file the plan in the manner that we have
8 discussed, you've met that benchmark, and that triggers your
9 next grace period under the statute. Okay.

10 MR. KAROTKIN: Very well.

11 THE COURT: I'm comfortable with that. So you want a
12 separate order that dispenses from the disclosure statement
13 formally? That's okay. I'll do that.

14 MR. KAROTKIN: Okay. We'll just submit a --

15 THE COURT: But the tradeoff is, on the assumption
16 that you file the plan.

17 MR. KAROTKIN: Yes, I understand, sir.

18 THE COURT: Okay. Okay. So --

19 MR. KAROTKIN: Thank you.

20 THE COURT: Anything else? All right. Thank you for
21 a long morning, everyone. And I look forward to hearing from
22 you what happens upstairs. Thank you.

23 (Whereupon these proceedings were concluded at 1:43 PM)
24
25

I N D E X

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| Debtors' second lease extension motion is granted. | 6 | 9 |
| Application of the official committee of tort claimants to retain and employ Trident DMG LLC as communications consultant effective as of July 18, 2019, is granted. | 9 | 6 |

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ CLARA RUBIN

eScribers

7227 N. 16th Street, Suite #207

Phoenix, AZ 85020

Date: August 28, 2019

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